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Supreme Court of the United States

OCTOBER TERM 1943

GOODYEAR MOTOR COMPANY, APPELLANT.

VS.  
THE UNITED STATES OF AMERICA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF INDIANA,  
IN A CASE WHEREIN GOODYEAR MOTOR COMPANY, PLAINTIFF,  
V. THE UNITED STATES OF AMERICA, DEFENDANT.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF INDIANA,  
IN A CASE WHEREIN GOODYEAR MOTOR COMPANY, PLAINTIFF,  
V. THE UNITED STATES OF AMERICA, DEFENDANT.

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FILED OCTOBER 14, 1943.

SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1946

No. 643

FORD MOTOR COMPANY, APPELLANT,  
vs.  
THE UNITED STATES OF AMERICA.

No. 644

COMMERCIAL INVESTMENT TRUST CORPORATION,  
COMMERCIAL INVESTMENT TRUST, INC.,  
UNIVERSAL CREDIT CORPORATION, ET AL.,  
APPELLANTS,

vs.

THE UNITED STATES OF AMERICA.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE NORTHERN DISTRICT OF INDIANA

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[fol. 1]

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION**

[Caption omitted].

UNITED STATES OF AMERICA, Complainant,

v.

FORD MOTOR COMPANY, COMMERCIAL INVESTMENT TRUST CORPORATION, COMMERCIAL INVESTMENT TRUST, INC., UNIVERSAL CREDIT CORPORATION, UNIVERSAL CREDIT COMPANY OF DELAWARE, UNIVERSAL CREDIT COMPANY OF INDIANA, and UNIVERSAL CREDIT COMPANY, INC., Respondents.

No. 8 Civil

COMPLAINT—Filed November 7, 1938

[fol. 2] To the Honorable the Judge of the District Court of the United States for the Northern District of Indiana, Sitting in Equity.

The United States of America, by James R. Fleming, United States Attorney for the Northern District of Indiana, acting under the direction of the Attorney General of the United States, brings this proceeding in equity against the Ford Motor Company, the Universal Credit Corporation, the Universal Credit Company, a corporation, the Commercial Investment Trust Corporation, all of which are organized and duly authorized to do business under the laws of the State of Delaware; the Universal Credit Company, a corporation organized and duly authorized to do business under the laws of the State of Indiana; the Universal Credit Company, Inc. and the Commercial Investment Trust, Inc. both organized and duly authorized to do business under the laws of the State of New York; all of which corporations are now doing business in the Northern District of Indiana, South Bend Division; and complains and alleges from information and belief as follows:

I

That defendant, Ford Motor Company, is engaged in the manufacture and sale of automobiles (herein referred to as

"Ford automobiles"); that defendants, Commercial Investment Trust Corporation and Commercial Investment Trust, Inc. are engaged in the business of financing the sale of automobiles, including Ford automobiles, by advancing funds to automobile dealers for the purchase at wholesale and to the public at retail of such automobiles; that defendants, Universal Credit Corporation, Universal Credit Company of Delaware, a corporation, Universal Credit Company of Indiana, a corporation, and Universal Credit Company, Inc. are engaged in the business of financing both the wholesale and retail sale of Ford cars exclusively; that defendant, Commercial Investment Trust Corporation owns 100% of the outstanding capital stock of defendant, Commercial Investment Trust, Incorporated, and 70% [fol. 3] of the outstanding capital stock of defendant, Universal Credit Corporation, a Corporation, and dominates and controls such companies; that defendant Universal Credit Corporation, owns 100% of the outstanding capital stock of defendants Universal Credit Company of Delaware, a corporation, Universal Credit Company of Indiana, a corporation, and Universal Credit Company, Inc. and dominates and controls such companies; that defendant Universal Credit Corporation, was organized in 1928 by defendant, Ford Motor Company, which acquired, owned and held all its capital stock and controlled and dominated it until 1933, at which time Ford Motor Company sold all the stock of Universal Credit Corporation to defendant, Commercial Investment Trust Corporation, and since such date the latter company has owned and controlled defendant, Universal Credit Corporation;

That defendants and each of them have been and are violating the provisions of Section I of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," 26 Stat. 209, commonly known as the Sherman Antitrust Act;

That under Section 4 of the above named Act the District courts of the United States are invested with jurisdiction to prevent and restrain violations of the Act;

That under Section 4 of the Act it is the duty of the several district Attorneys of the United States in their respective districts, under the supervision of the Attorney General, to institute proceedings in equity to prevent and



restrain violations, and that such proceedings may be instituted by way of a complaint setting forth the case and praying that such violation shall be enjoined or otherwise prohibited;

That defendants and each of them for a period of three years immediately preceding the filing of this complaint, and for many years prior thereto have been and are guilty of violation of Section I of the Sherman Act in all parts of the United States, as well as in the Northern District of Indiana, South Bend Division, by combining and conspiring together to restrain and control the trade and commerce in Ford automobiles and the wholesale and retail sale and financing of Ford automobiles among the several states, and will continue such violations unless enjoined;

That defendants and each of them are within the jurisdiction of this Court for purposes of service.

## II

Complainant alleges and complains further that the Ford Motor Company (hereinafter called "Ford"), the General Motors Corporation (hereinafter called "General Motors"); and the Chrysler Corporation and the subsidiary corporations owned and controlled by it (hereinafter called "Chrysler") are the principal manufacturers of motor cars in the United States and are competitors with each other; that for many years past, and particularly during the three-year period immediately preceding the filing of this complaint, Ford, General Motors and Chrysler, have manufactured, sold and delivered at wholesale approximately 90% of the automobiles manufactured in the United States, of which respondent, Ford Motor Company, has manufactured and sold approximately 23%; that the remaining 10% have been manufactured, sold and delivered by some 12 to 15 other manufacturers;

That during the period from January 1, 1934, to the date of the filing of this complaint, approximately 16,000,000 automobiles have been manufactured, sold and delivered at wholesale and retail in the United States; that of these General Motors has produced approximately 7,000,000, Chrysler approximately 4,000,000, Ford approximately 4,000,000 and the 12 or 15 other manufacturers, approximately 1,000,000;

That the automobiles of the Ford Motor Company are and have been at all material times manufactured at plants located in the States of Michigan, Minnesota, Illinois, Ohio, Pennsylvania, New York, New Jersey, Massachusetts, Virginia, Kentucky, Missouri, Georgia, Texas and California; those of the General Motors Corporation, at plants located in the States of Michigan; Wisconsin, Missouri, Georgia, New York, New Jersey and California; those of the Chrysler Corporation, at plants located in the [fol. 5] States of Michigan, Indiana and California;

That these automobiles are and at all material times have been manufactured, transported, sold, financed, and delivered in interstate commerce, each of the above steps being necessary and integral parts of a continuous flow of commerce in getting automobiles from the manufacturers to retail purchasers in the several states, including retail purchasers located in the Northern District of Indiana, South Bend Division, and that the evils complained of herein are incident to, a part of, and directly affect commerce among the several states and the flow thereof;

That the sale of motor-cars manufactured by Ford, General Motors and Chrysler to the public is and at all material times has been made through some 40,000 persons, companies and corporations known as automobile dealers, of whom approximately 11,000 are Ford dealers, located throughout the several states, who are engaged in the business of buying and selling automobiles; that dealers purchase new automobiles from the manufacturers thereof pursuant to contracts which are subject to cancellation at the will of either party; that cars, including Ford cars, when purchased by dealers, have been and will continue to be transported from the above named places of manufacture to dealers located in the several states, including many dealers located in the Northern District of Indiana, South Bend Division;

That during the three-year period immediately preceding the filing of this complaint, as well as during many years prior thereto, Ford, General Motors, and Chrysler have required and will continue to require payment in cash at the factory for all cars sold by them, prior to transportation and delivery thereof in interstate commerce from the factory to dealers located in the several states, as well as many dealers located in the Northern District of Indiana, South Bend Division;

That during the past three years approximately \$12,500,000,000 has been paid to automobile manufacturers for new cars shipped to dealers, of which approximately \$6,500,000,000 has been paid for cars manufactured by General Motors; \$2,500,000,000 for cars manufactured by [fol. 6] Chrysler, and \$2,500,000,000 for cars manufactured by Ford, and approximately \$1,000,000,000 for cars manufactured by the remaining 12 to 15 automobile manufacturers;

That because of the high unit prices of automobiles demanded by respondent, Ford, Chrysler and General Motors, and because said manufacturers have required payment for cars in cash before shipment and delivery to dealers it has been necessary for the great majority of dealers to secure money in large quantities from sources other than their own; that in order to supply these necessary funds many automobile finance companies have been organized and have been regularly and continuously engaged in the business of lending funds to such dealers for the purchase of cars from the manufacturers, which loans are secured by the cars so purchased; that there are three major groups of finance companies (hereinafter referred to as the "affiliated finance companies") engaged in the business of supplying funds to dealers for the purchase of automobiles, and that each of said groups of companies is affiliated with one of the major manufacturers pursuant to stock ownership, contract or working agreement; that respondents, Commercial Investment Trust Corporation, Commercial Invest Trust, Incorporated, Universal Credit Corporation, Universal Credit Company of Delaware, Universal Credit Company of Indiana, and Universal Credit Company, Inc. (herein referred to as "respondent finance companies") are affiliated with Ford, originally by stock ownership and currently by working agreement; the General Motors Acceptance Corporation and its subsidiary companies with General Motors through 100% stock ownership of the former by the latter; and Commercial Credit Company and its affiliates with Chrysler through contractual agreement and partial stock ownership of the former by the latter; that the affiliated finance companies have furnished the major portion of the funds required by dealers of the three above named manufacturers in financing their purchases of new cars; that in addition to the affiliated finance companies there are approximately



375 finance companies, as well as banks and other lending institutions, which have no relation to the three major manufacturers either by stock ownership, contract or work-[fol. 7] ing agreement (arbitrarily referred to herein as "independent finance companies") which are located in all states in the United States and are there engaged, either in whole or in part, in financing the sale of automobiles by manufacturers to dealers; that during the three-year period immediately preceding the filing of this complaint the affiliated and independent finance companies have supplied to dealers of the three above named automobile manufacturers for purposes of financing such dealers' purchase of new cars approximately \$5,500,000,000 of which the affiliated finance companies have supplied approximately \$4,500,000,000 and the independent finance companies have supplied approximately \$1,000,000,000; that during the same three-year period the Universal Credit Company and its affiliates have financed approximately 82% of the Ford cars supplied to Ford dealers and independent finance companies have financed the remaining 18%;

That approximately 60% of the new cars manufactured by the three above-named manufacturers at all material times have been sold at retail by dealers upon the so-called installment plan which requires the purchaser to pay a part of the purchase price at the time of the sale, either in cash or in a used car, or both, with the remainder to be paid in installments; that since dealers have been unable generally to finance such sales on credit with their own funds, the affiliated and independent finance companies have advanced funds to individual purchasers of new cars who purchase them on the installment plan; that the funds so advanced are secured by the installment note of the purchaser, indorsed by the dealer with or without recourse, as the case may be, and secured by the pledge of the automobile so purchased; that during the three years immediately preceding the filing of this complaint approximately 6,500,000 new cars have been sold on the installment plan; that affiliated and independent finance companies have furnished approximately \$6,000,000,000 to purchasers, \$5,000,000,000 of which has been supplied by the affiliated finance companies and \$1,000,000,000 by the independent finance companies; that during said period Universal Credit Company and its affiliates have supplied approximately 70% of



[fol. 8] the funds required to finance the retail time sales of Ford dealers.

### III

Complainant alleges and complains further that each of the three major automobile manufacturers, General Motors, Chrysler, and respondent, Ford, together with their respective affiliated finance companies, General Motors Acceptance Corporation, Commercial Credit Corporation and its affiliates, and respondent, Universal Credit Company and its affiliates, respectively, have at all material times conspired separately to impede unreasonably the free flow of commerce in automobiles and in the financing thereof in the several states, as well as in the Northern District of Indiana, South Bend Division, by excluding or attempting to exclude all other finance companies from financing the wholesale sale of new cars to dealers and the retail sale of new and used cars by dealers; that respondent, Ford Motor Company, and respondents, Commercial Investment Trust Corporation, Commercial Investment Trust, Incorporated, Universal credit Corporation, Universal Credit Company of Delaware, Universal Credit Company of Indiana, and Universal Credit Company, Inc., have employed, among others, the following means and have done the following overt acts for the purpose of affecting the conspiracies herein alleged, to wit:

1. That dealers of the Ford Motor Company, numbering approximately 11,000 during the three-year period immediately preceding the filing of this complaint, have been coerced, intimidated and discriminated against by the said Ford Motor Company for the purpose and with the effect of forcing them to use the services and facilities of respondent finance companies herein, in financing both wholesale and retail purchases of Ford motor-cars;

2. That Ford dealers have been required by the Ford Motor Company to promise to use the facilities of respondent finance companies under threats of cancellation of their dealer contracts with Ford Motor Company;

3. That dealers refusing to make their purchases and sales of Ford cars through respondent finance companies, [fol. 9] in many instances, have had their dealer contracts

cancelled by the Ford Motor Company without notice and without statement of cause;

4. That the Ford Motor Company has refused to deliver cars to dealers refusing the use of such services;

5. That Ford has delivered to dealers who failed to finance through respondent finance companies cars on occasions when none were ordered;

6. That Ford has delayed untuly shipments of cars ordered by dealers who refused to use the facilities of respondent finance companies;

7. That Ford has shipped to dealers who refused to use the facilities of respondent finance companies cars of different color, design, model, style and number than those ordered, and have favored those dealers availing themselves of the services of respondent finance companies with respect to services, facilities, privileges and conveniences in the delivery of cars;

8. That Ford dealers are and have been at all material times required by respondent Ford Motor Company to permit respondent finance companies to inspect their books, records and accounts for the purpose of determining the amount of financing done by the dealers with respondent finance companies, as well as with the independents, and that such privileges have been and are denied independent finance companies;

9. That Ford dealers have been and are required by respondent Ford Motor Company to disclose the amount of finance business done with independent finance companies;

10. That respondent, Ford Motor Company, by various means, divulges to respondent finance companies or permits them to secure from the agents, servants and employees of Ford dealers information relative to the finance business done by such dealers with independent finance companies, which privileges are denied the independent finance companies;

11. That the Ford Motor Company furnishes respondent finance companies with office space in its factories enabling [fol. 10] the latter to determine the number of cars ordered by individual dealers and other information relating to

their business, and convenient facilities for carrying on their finance business, which privilege is denied the independent finance companies;

12. That respondent, Ford Motor Company, permits representatives of respondent finance companies to attend Ford district, divisional and national sales meetings with Ford dealers for the purpose of urging such dealers to patronize respondent finance companies, which privileges are denied the independent finance companies;

13. That respondent, Ford Motor Company, furnishes respondent finance companies with all contracts with dealers and other instruments deemed necessary to security in delivering cars to dealers, which privileges are denied the independent finance companies;

14. That respondent, Ford Motor Company, advertises, indorses and recommends the financing services of respondent finance companies to dealers and to the public while refusing to do the same for independent finance companies;

15. That respondent, Ford Motor Company, furnishes respondent finance companies with information relating to the purchase, sale, transportation and delivery of cars to Ford dealers, including a description and identification of cars, and refuses the same to independent finance companies;

16. That Ford passes title to Ford cars financed through the facilities of the respondent finance companies to those finance companies before the car is shipped to the dealer, the latter securing only possession and custody and accepts payment from respondent finance companies for such cars, while it refuses to accept payment for cars from independent finance companies or to pass title to them but will accept payment for cars financed by independent finance companies only from the dealer and will deliver title only to the dealer;

17. That dealers financing retail time sales through respondent finance companies are required by the latter to indorse the notes of the retail purchaser with recourse and [fol. 11] thus to assume a secondary liability for their payments;

18. That respondent finance companies require dealers to include in the charge made by them to retail purchasers for financing the sale of Ford automobiles on the installment plan a so-called dealers' reserve in an amount fixed and prescribed by them, which is in addition to interest, insurance and all other charges made by the dealer; that the alleged purpose of such reserve is to compensate the dealer for losses sustained by him in case of default by the purchaser in the payment of the full purchase price of the automobile purchased by him; that such reserves, when paid by the purchaser to the respondent finance company, are retained by it until the purchaser's obligation has been paid in full, at which time it is either paid over to the dealer or retained further as security for the payment of other obligations of the dealer to respondent finance companies; that such dealers' reserve is not fixed by respondent finance companies on an actuarial basis and is and has been far in excess of actual losses sustained by dealers; that purchasers of automobiles from Ford dealers are not advised that any dealers' reserve is included in the charge made for such purchase; that this reserve is in the nature of a rebate to dealers to induce them to use the services of respondent finance companies and increases unduly the time sales purchase price to the automobile purchaser; that during the period from 1925 to and including the date of the filing of this complaint, respondent finance companies have paid to dealers as such reserves sums totalling more than \$54,000,000, and for the year 1937, sums totalling more than \$9,000,000; that respondent finance companies now have in their possession large sums of money, to wit, many millions of dollars in the form of dealer reserves collected from purchasers without their knowledge and not yet rebated to dealers;

19. That respondents have discriminated against independent finance companies with respect to the manner, form and time of payment for time sales paper purchased by them;

20. That for the purpose of inducing Ford dealers to make use of their services, respondent finance companies have represented to such dealers that Ford would discriminate against them in the time and manner of [fol. 12] delivery of automobiles to them and otherwise unless such dealers made use of the services of respondent



finance companies; that agents of Ford and respondent finance companies, by prearrangement, have jointly visited dealers with the purpose and effect, by threats, persuasion and intimidation of inducing such dealers to make use of the services of respondent finance companies;

21. That, unless enjoined, Ford will hereafter in pursuance of the conspiracy herein alleged, discriminate against independent finance companies and in favor of respondent finance companies by the acquisition of stock or other interest in respondent finance companies or by making loans or gifts to respondent finance companies and denying same to independent finance companies;

22. That at all times material and within the three years immediately preceding the filing of this complaint, as well as for many years prior thereto, respondents and all of them have regularly and continuously carried out, performed, engaged in and committed all of the acts, practices, arrangements, agreements, discriminations, threats and wrongs described hereinabove in all states of the United States, as well as in the Northern District of Indiana, South Bend Division, and unless enjoined will continue so to do.

#### IV

Complainant alleges and complains further that the purpose and effect of the aforementioned practices of respondents have been to procure, restrain and keep within their control to the greatest extent possible and to the exclusion of all other persons, companies and corporations, the business of financing the trade and commerce of new Ford automobiles among the several states and in used automobiles of any make and model handled by Ford dealers; that substantial investments, credit and property of many Ford dealers have been either destroyed, reduced in value or jeopardized by the practices described hereinabove; that the retail price of automobiles to the public has been increased unreasonably by such practices; that such practices have jeopardized and destroyed the business [fol. 13] of independent; that such practices have been pursued by respondents continuously for the three-year period immediately preceding the filing of this complaint, as well as for many years prior thereto; that such acts

and practices are continuous and will continue in the future unless restrained, enjoined and prohibited by this Court.

WHEREFORE, complainant prays that respondent, Ford Motor Company, and its officers, directors, agents and servants be restrained, enjoined and prohibited from doing or causing to be done any of the following;

1. From coercing its dealers in the manner described in particular hereinabove, or in any way, to use the financing facilities of respondent finance companies;

2. From discriminating in ways more particularly set out hereinabove, or in any way, against Ford dealers who do business with independent finance companies;

3. From discriminating against independent finance companies in the financing by Ford dealers of both wholesale and retail purchases of Ford cars, and used cars taken by dealers on trade in the sale of new cars;

4. From requiring any dealer by threats, intimidation, contractual arrangement or otherwise, to use a particular plan or rate of financing;

5. From cancelling or threatening to cancel any contract, franchise or agreement with any dealer because of failure of such dealer to patronize respondent finance companies;

6. From agreeing with any finance company that an agent of the finance company and the manufacturer will be present for the purpose of influencing the dealer to patronize any particular finance company;

7. From recommending or advertising any particular finance company to any dealer or to the public;

8. From acquiring in any way an interest in any finance company or by gift, loan or otherwise rendering financial assistance to any finance company.

[fol. 14] Complainant prays further:

1. That respondent, Ford Motor Company, its officers, directors, agents and servants, be required to make available to independent finance companies privileges, services and facilities substantially similar to those made available to respondent finance company, without discrimination, including space in the factory, information relating to iden-

tity of dealers and amount of business done with competitors, attendance at district division, factory and national sales meetings, provided such privileges are accorded respondent finance companies;

2. That respondent, Ford Motor Company, its officers, directors, agents and servants, be required to assign title or lien to all cars sold to dealers to any and all finance companies on similar terms.

Complainant prays further that respondent finance companies and each of them, their officers, directors, agents and servants, be restrained, enjoined and prohibited from doing or causing to be done any of the following:

1. From representing to any dealer that the manufacturer requires him to patronize any particular finance company;

2. From representing to any dealer that his franchise will be cancelled for failure to patronize respondent finance companies;

3. From requiring dealers to include in their retail time sales price of automobiles any sum in the form of a dealers' reserve, rebate, pack or otherwise.

Complainant prays further that discriminations of all types as between affiliated or favored finance companies and independents be prohibited; that all automobile finance companies be treated alike or in such manner as the Court may deem necessary and proper to maintain the good-will of the manufacturer.

Complainant prays further that this Court retain continuing jurisdiction of this cause for purposes of carrying out the matters herein prayed for, and for such further order or orders and for such other and further relief as the Court may deem necessary, equitable, just and proper in the premises.

[fols. 15-16] James R. Fleming, United States Attorney for the Northern District of Indiana.

Homer Cummings, Attorney General of the United States. Thurman Arnold, Assistant Attorney General of the United States, John J. Abt, Homes Baldridge, Special Assistants to the Attorney General of the United States.

[fol. 17] IN UNITED STATES DISTRICT COURT

SEVERAL ANSWER OF FORD MOTOR COMPANY, A DEFENDANT—  
Filed November 7, 1938

To the Honorable the Judge of the District Court of the  
United States for the Northern, District of Indiana,  
Sitting in Equity:

The Ford Motor Company, a corporation organized and  
authorized to do business under and by virtue of the laws  
of the State of Delaware, one of the defendants herein,  
for its several answer to the complaint in this cause re-  
spectfully says:

### First Defense

The Complaint fails to state a claim against defendant  
Ford Motor Company, upon which relief can be granted.

### Second Defense

In answer to the preamble to the complaint, this defend-  
ant admits that it is organized and authorized to do busi-  
ness under the laws of the State of Delaware and avers  
that it has a place of business in the City of Indianapolis,  
in the State of Indiana, and that it sells goods to persons,  
firms and corporations having places of business in the  
Northern District of Indiana, South Bend Division but  
denies that it has any place of business in, or is now doing  
business in the Northern District of Indiana, South Bend  
Division. It believes the other allegations of said preamble  
to be true but has no actual knowledge of the facts.

### I

In answer to paragraph I of the complaint, this defend-  
ant admits (a) that it is engaged in the manufacture and  
sale of automobiles; (b) that Universal Credit Corporation  
was organized by this defendant in 1928 and that this de-  
fendant then acquired a major portion of the capital stock  
of that corporation and controlled it by stock ownership  
until 1933 when this defendant, Ford Motor Company,  
sold all its stock in said Universal Credit Corporation to  
defendant, Commercial Investment Trust Corporation (c)  
That this defendant has a place of business in the City of  
Indianapolis in the State of Indiana in charge of an agent  
upon whom process of this court could be served. This



[fol. 18] defendant believes (a) that Commercial Investment Trust Corporation and Commercial Investment Trust, Inc. are directly or indirectly engaged in the business of financing the sale of automobiles by advancing funds to automobile dealers for purchase at wholesale and sale to the public at retail of such automobiles but has no actual knowledge of the facts; (b) That Universal Credit Corporation, Universal Credit Company, a Delaware corporation, Universal Credit Company, an Indiana corporation, and Universal Credit Company, Inc. are also engaged in the business of financing both at wholesale and at retail sale of Ford cars but does not have exact knowledge as to which company is handling the transactions, and has no knowledge or information sufficient to form a belief as to whether those companies are engaged in that business exclusively. This defendant has no knowledge or information sufficient to form a belief as to the allegations of said paragraph (a) regarding ownership by Commercial Investment Trust Corporation of stock in other corporations or domination and control by it of other corporations; (b) regarding ownership by Universal Credit Corporation of capital stock of other corporations or domination or control by it of other corporations; (c) regarding ownership and control of Universal Credit Corporation since 1933; (d) as to the jurisdiction of the court over the other defendants. This defendant denies all the other allegations of fact contained in said paragraph I.

## II

In answer to paragraph II of said complaint, this defendant, Ford Motor Company admits (a) that automobiles are manufactured in the United States by a number of manufacturers (it does not know the exact number) of whom this defendant, General Motors and its affiliated companies, and Chrysler and its affiliated companies, who are competitors with each other, are the principal ones; (b) that during the period from January 1, 1934 to date this defendant produced approximately 4,000,000 automobiles, which it believes to have been at least 23% of the total; (c) that this defendant has factories in the various states alleged in that paragraph at which at some times within material times, but not always, automobiles have been manufactured; (d) that General Motors or its affiliated [fol. 19] companies and Chrysler or its affiliated companies

have also manufactured automobiles at plants in various states but this defendant does not know whether the list of states averred is exactly accurate; (e) that automobiles manufactured by this defendant have been sold by this defendant to dealers, located in other states than that where manufactured, who have purchased for resale to retail purchasers, and have been transported from the state where manufactured to the places of business of such dealers in other states (f) that such sales have included sales to dealers in the Northern District of Indiana, South Bend Division, from factories in other states; (g) that a large number of persons, companies and corporations are engaged in business as automobile dealers; it does not know how many but the number includes approximately 7,000 regular Ford dealers, besides a considerable number of associate dealers and sub-dealers; (h) that it is its practice, and it believes that it is the usual practice of the industry, to have automobiles paid for before shipment or before delivery by the carrier after shipment (i) that during the past three years a large sum, but something less than \$2,500,000,000 has been paid to this defendant for automobiles manufactured by it and shipped to its dealers, and large sums, but it does not know how large, have been paid to other manufacturers for automobiles manufactured by other manufacturers and shipped to their dealers (j) that many automobile dealers do procure money in large sums from sources other than their own to finance the purchase of automobiles and their resale to retail purchasers; (k) that a large number of finance companies have been organized which have engaged in the business of financing automobiles as have various banks and other financial institutions; (l) that Universal Credit Corporation and its affiliated companies has financed a considerable number of the cars supplied to Ford dealers; (m) that many automobiles are sold at retail on the installment plan, (n) that various finance companies and other financial institutions finance such sales; (o) that during the three years immediately preceding the filing of this complaint many new cars have been sold on the installment plan; (p) that Universal Credit Company and its affiliated companies have supplied the funds to finance the installment sales of a [fol. 26] large number of Ford dealers but this defendant does not know exactly how many. This defendant believes

General Motors Acceptance Corporation and its affiliated companies finance the sale of a considerable number of the cars manufactured and sold by General Motors Corporation or its affiliated companies; and Commercial Credit Company or its affiliated companies finance a considerable number of cars manufactured and sold by Chrysler or its affiliated companies. This defendant has no knowledge or information sufficient to form a belief as to the other allegations of said paragraph II of the complaint regarding others than this defendant. It denies all of the other allegations regarding this defendant.

### III

In answer to the allegations of Paragraph III of said complaint, this defendant denies all of the averments of that paragraph regarding this defendant, Ford Motor Company, and concerning acts and arrangements matters and things to which this defendant, Ford Motor Company, is averred to be a party. This defendant says it has no knowledge or information sufficient to form a belief as to the allegations contained in said paragraph III relating to others and to acts and arrangements matters and things to which this defendant is not a party.

### IV

In answer to the allegations of Paragraph IV of said complaint, this defendant denies all of the averments of that paragraph regarding this defendant, Ford Motor Company, and concerning acts and arrangements matters and things to which this defendant, Ford Motor Company, is averred to be a party. This defendant says it has no knowledge or information sufficient to form a belief as to the allegations contained in said paragraph IV relating to others and to acts and arrangement matters and things to which this defendant is not a party.

[fols. 21-22]

### V

This defendant denies all portions of said complaint not hereinbefore specifically answered.

### Third Defense

This defendant, Ford Motor Company, avers that the matters and things set forth in the complaint do not in-

volve interstate commerce, do not involve the Sherman Anti-Trust Act, do not involve the Constitution and laws of the United States of America, and hence, this court is entirely without jurisdiction.

#### Fourth Defense

This defendant, Ford Motor Company, further avers that the subject matter of this suit is not within the venue of this court and therefore none of the claims made by the complainant can be properly adjudicated and determined in this court.

Wherefore, this defendant, Ford Motor Company, denies that the complainant is entitled to the relief prayed for, or any portion thereof, or to any relief, and prays that the complaint herein be dismissed.

Bodman, Longley, Bogle & Middleton & Farley,  
Clifford S. Longley, Wallace R. Midderton, Attor-  
neys for defendant, Ford Motor Company, 1400  
Buhl Building, Detroit, Michigan.

Dated: November 7, 1938.

[fol. 23] IN THE DISTRICT COURT OF THE UNITED STATES,  
FOR THE NORTHERN DISTRICT OF INDIANA.

No. 8 Civil

UNITED STATES OF AMERICA, Petitioner,  
against

FORD MOTOR COMPANY, UNIVERSAL CREDIT CORPORATION,  
et al., Respondents.

FINAL DECREE—Filed November 15, 1938

1. The United States of America filed its petition herein on November 7, 1938; each of the respondents appeared and filed its answer to such petition, and asserted the truth of its answer and its innocence of any violation of law; the petitioner and the said respondents desire to avoid the expenses of a trial of the issues therein and the loss of time occasioned, thereby; no testimony having been taken, each of the respondents consented to the entry of this decree without any findings of fact, upon condition



that neither such consent nor this decree shall be considered an admission or adjudication that it has violated any statute; and the United States of America by its counsel having consented to the entry of this decree and to each and every provision thereof, and having moved the court for this injunction,

THEREFORE, it is ordered, adjudged and decreed as follows:

2. That the court has jurisdiction of all persons and parties hereto; and for the purposes of this decree and proceedings for the enforcement thereof, and for no other purpose, that the court has jurisdiction of the subject matter hereof and the petition states a cause of action against [fol. 24] the respondents under the Act of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies".

3. "Respondent Finance Company" as used in this decree shall include Universal Credit Corporation, Universal Credit Company (a Delaware corporation), Universal Credit Company (an Indiana corporation), Universal Credit Company, Inc., Commercial Investment Trust Corporation, and Commercial Investment Trust Incorporated and their officers, directors, agents and employees. "Manufacturer" as used in this decree shall include Ford Motor Company and its officers, directors, agents and employees.

4. The respondents, their officers, directors, agents and employees, be and they are hereby enjoined from doing the acts hereby prohibited and to do the acts hereby directed.

5. The following terms, as used in this decree, shall have the following meanings:

(a) "Person" shall mean a person, firm, corporation or association.

(b) "Dealer" shall mean a person who holds a franchise from or approved by, the Manufacturer, that provides for the purchase at wholesale of new automobiles made by the Manufacturer, and who resells the automobiles at retail.

(c) "Wholesale financing" shall mean the advancing by a finance company, as hereinafter defined, of money or credit to or for the account of a dealer to cover, in whole or in part, the cost of new automobiles ordered by the dealer at wholesale.

(d) "Retail financing" shall mean the purchase or other acquisition of retail time sales paper from dealers by finance companies, as hereinafter defined.

(e) "Finance charge" shall mean the difference between the cash delivered price of an automobile and the [fol. 25] price of that automobile when sold on an installment payment plan, including or not including (as the plan may provide) insurance for the retail purchaser.

(f) "Finance company" shall mean a person engaged chiefly in wholesale financing or retail financing, or both.

(g) "Retail time sales paper" shall mean any conditional sale contract, chattel mortgage, lease, note or other instrument given to evidence or secure the obligation to pay the whole or any part of the price of automobiles sold by a dealer at retail.

(h) "A finance company" or "any finance company" shall include Respondent Finance Company.

(i) "Registered finance company" shall mean a finance company which shall be registered as provided in subparagraph (j) of paragraph 6 of this decree including Respondent Finance Company if it be a registered finance company.

(j) "Chrysler Corporation" means Chrysler Corporation, a corporation of the State of Delaware and its subsidiaries and successors, "General Motors Corporation" means General Motors Corporation, a corporation of the State of Delaware and its subsidiaries and successors, and "General Motors Acceptance Corporation" means General Motors Acceptance Corporation, a corporation of the State of New York and General Motors Acceptance Corporation of Indiana, Incorporated, a corporation of the State of Indiana, and their subsidiaries and successors.

#### 6. The Manufacturer:

(a) Shall permit any finance company or other person

to pay for any automobile shipped or otherwise delivered by the Manufacturer to any dealer, upon written specific or continuing authority of the dealer;

(b) So long as the Manufacturer shall continue to give or assign to Respondent Finance Company or any other finance company, any document of title or lien in respect [fol. 26] of such automobiles, it shall not refuse, upon written request of any other finance company, to make available or assign to it similar documents of title or lien in respect of automobiles similarly shipped or delivered to the dealer and paid for by the finance company upon substantially similar terms and conditions;

(c) So long as the Manufacturer shall continue to furnish Respondent Finance Company or any other finance company space for maintaining an office in any place of business of the Manufacturer, it shall not refuse, upon substantially equivalent terms and conditions and upon written request of any other finance company that extends wholesale financing facilities to dealers operating under franchise of the Manufacturer, to furnish it space for maintaining an office in such place of business; provided that it shall not be a violation of this decree for the Manufacturer to furnish the same only to registered finance companies as defined in sub-paragraph (j) of this paragraph 6;

(d) So long as the Manufacturer shall knowingly continue to furnish to Respondent Finance Company or any other finance company the identity of or other information concerning dealers or prospective dealers, it shall not knowingly refuse to furnish corresponding information, upon substantially similar terms and conditions and upon specific or continuing request as to identity and specific but non-continuing request as to other information, to any other finance company whose territory includes the location of such dealer's or prospective dealer's place of business; provided that it shall not be a violation of this decree for the Manufacturer to furnish the same only to registered finance companies as defined in sub-paragraph (j) of this paragraph 6, or only to a finance company designated in writing to the Manufacturer by the dealer or prospective dealer;

(e) Except as provided by sub-paragraphs (j) and (k) of this paragraph 6,

(i) the Manufacturer shall not establish any practice, procedure or plan for the retail or wholesale financing of automobiles for the purpose of enabling [fol. 27] Respondent Finance Company or any other finance company or companies to enjoy a competitive advantage in obtaining the patronage of dealers through any service, facility or privilege extended by the Manufacturer pursuant to such practice, procedure or plan if such service, facility or privilege or a service, facility or privilege corresponding thereto, is not made available upon its written request to any other finance company upon substantially similar terms and conditions; and

(ii) so long as the Manufacturer shall continue to afford any service, facility or privilege not otherwise specifically referred to in this decree to Respondent Finance Company or any other finance company or companies, it shall not refuse to afford similar or corresponding services, facilities or privileges upon substantially similar terms and conditions and upon written request to any other finance company for the purpose of giving Respondent Finance Company or any other finance company or companies a competitive advantage in obtaining the patronage of dealers; provided that it shall not be a violation of this decree for the Manufacturer to afford such service, facility or privilege only to registered finance companies as defined in sub-paragraph (j) of this paragraph 6 or only to a finance company designated in writing to the Manufacturer by the dealer or prospective dealer;

the written request shall specify in each instance the particular service, facility or privilege desired;

(f) The Manufacturer shall not give or make available or deny or threaten to deny to any dealer any service or facility, or discriminate among its dealers in any other manner, for the purpose of influencing a dealer to patronize Respondent Finance Company or any other finance company, or registered finance companies;

(g) The Manufacturer shall not enter into or further continue any contract or agreement with any dealer (1) which provides that the dealer shall patronize only Re-



spondent Finance Company or any other finance company selected by the Manufacturer or registered finance companies or (2) which requires the dealer to observe any [fol: 28] plan for or rate of financing the purchase and sale of automobiles designated by the Manufacturer;

(h) The Manufacturer shall not cancel or terminate any contract, franchise or agreement with any dealer, or threaten to do so, because of failure of such dealer to patronize Respondent Finance Company, or any other finance company, or because of the failure of the dealer to patronize registered finance companies;

(i) The Manufacturer shall not, except in each instance upon written request of the dealer or prospective dealer, arrange or agree with Respondent Finance Company or any other finance company that an agent of the Manufacturer and an agent of the finance company shall together be present with any dealer or prospective dealer for the purpose of influencing the dealer to patronize Respondent Finance Company or such other finance company; provided, however, that it shall not be a violation of this decree for the Manufacturer to assist any dealer or prospective dealer, because of said dealer's or prospective dealer's financial situation or requirements, by joint conference with him and a representative of a particular finance company, to obtain special facilities or services (such term not including only the financing of the shipment or delivery of automobiles to such dealer or prospective dealer and/or only the purchase or acquisition of retail time sales paper from him in the regular course of business) from the particular finance company and, in part consideration of such special facilities or services, for such dealer or prospective dealer to arrange to do business with such finance company on an exclusive basis for a reasonable period of time as may be agreed between them;

(j) As used in this decree the word "registered" as applied to a finance company means a finance company that shall have done the following things and shall have filed a statement that meets the following requirements:

1. The statement shall be signed and acknowledged by the finance company and sworn to by an officer thereof, and shall have been filed in this proceeding and a copy

thereof certified by the clerk shall have been served on the Manufacturer.

[fol. 29] 2. The finance company shall not in any manner have withdrawn the statement or rendered it ineffective.

3. The court shall not have made an order to the effect that the finance company shall cease to be a registered finance company; or, if so, the finance company shall have obtained an order reinstating it as a registered finance company, or otherwise shall have become again a registered finance company.

4. The statement shall be in the following form:

"To Ford Motor Company (hereinafter called the 'Manufacturer'):

"(A) This statement is made pursuant to subparagraph (j) of paragraph 6 of a decree of the United States District Court for the Northern District of Indiana, in a cause entitled 'United States of America vs. Ford Motor Company, et al.', dated November 15, 1938.

"(B) The undersigned finance company, in acquiring retail time sales paper, arising from sales of automobiles, from dealers of the manufacturer, wherever located, will conform to the following rules:

(1) If the finance company acquires retail time sales paper from a dealer of the Manufacturer on a finance plan which includes insurance to be arranged for by the finance company, the finance company shall (unless the insurance company to which the risk is submitted declines to write the risk) arrange for such insurance as the dealer represents to the finance company is to be arranged for by it and shall mail or cause to be mailed to the buyer a policy or certificate of insurance so arranged for within twenty-five days after the finance company acquires such retail time sales paper. Such policy or certificate shall recite the character of the coverage and the amount of the insurance premium;

(2) The finance company will not require or accept assignments of wages or salaries, or garnish wages

or salaries to collect deficiency judgments in respect of [fol. 30] automobiles sold for less than \$1,000 and for private and non-commercial use unless, prior to repossession, it has requested the buyer to return the automobile to it and he has not done so;

(3) The finance company will not take any deficiency judgment where the retail purchaser of an automobile, sold for private and non-commercial use, has paid at least 50% of his note or other obligation, and will not collect from any retail purchaser of an automobile, through deficiency or other judgments, any amount in excess of its actual losses and expenses upon the failure of such purchaser to pay his note or other obligation, and will pay to or credit to the account of such purchaser any surplus over the amount owing by him on his note or other obligation which the finance company or its nominee or its affiliated or subsidiary company may realize on the purchaser's note or other obligation and the automobile or any other security therefor;

(4) The finance company will not assign or transfer any retail time sales paper owned or held by it to any other person, except a dealer from whom the finance company acquired the paper on a full recourse basis rather than upon a non-recourse basis or upon the dealer's agreement to repurchase the automobile if repossessed, without limiting the rights, and creating an obligation in its assignee and his successors in interest, to proceed against the retail buyer only in the manner and to the extent that the finance company is authorized to proceed hereunder;

(5) The finance company will not make a higher charge, for granting an extension or rewriting a transaction, than the approximate pro-rata equivalent of the original finance charge, or charge more than 5 per cent. of the delinquent instalments for reinstating a delinquent account or charge more than its out-of-pocket expense plus a reasonable amount for the time of its employees as collection or repossession expenses;

[fol. 31]—(6) The finance company will not require the dealer to take a chattel mortgage or other lien on

property other than the automobile purchased, as additional security for the payment for such automobile sold for private and non-commercial use; and will not accept an assignment from the dealer of such a chattel mortgage or other lien;

(7) The finance company will not represent to any person that it is, in any way, connected or affiliated with the Manufacturer, or that it has been approved, recommended or endorsed by the Manufacturer, or in any way ascribe to the Manufacturer or its dealers responsibility for, or authorization of, its acts; but this shall not prevent the finance company from stating if that be the case that it is a registered finance company, and at any time when a plan adopted by the Manufacturer is in effect this shall not prevent the finance company from stating if that be the case that it is a registered finance company and is offering financing service in accordance with the plan;

(8) The finance company will not intentionally do anything injurious to the good will of the Manufacturer or to the reputation of its products, or to the good will of its dealers except as may result from the assertion of any legal or contractual rights;

(9) The finance company will not without the consent of the Manufacturer disclose to any competitor of the Manufacturer information which it shall have received from the Manufacturer;

(10) The finance company will disclose to the purchaser whatever information is required to be disclosed by, and will otherwise comply with, any further order of the court entered pursuant to paragraph 8 of the decree hereinbefore mentioned;

(11) The finance company will not violate any other reasonable rule hereafter from time to time established [fol. 32] by the Manufacturer, approved by the Department of Justice of the United States and incorporated herein by the further order of the United States District Court for the Northern District of Indiana, after notice by registered mail to all registered finance companies and notice in such form as the court may determine to be reasonable to other



finance companies and interested parties and an opportunity for hearing to the persons so notified.

“(C) The area within which the finance company conducts its business is: *[insert either ‘the United States’ or the names of specific states, counties or cities]*, and notwithstanding the designation of an area, the finance company nevertheless will comply with clause (B) in all areas in which it may now or hereafter do business with dealers of the Manufacturer.

“(D) This statement is filed on behalf of, and shall bind, the undersigned finance company and all finance companies owned or controlled by the undersigned finance company, and all finance companies which own or control the undersigned finance company or are under common ownership or control with it.

“(E) The address of the finance company’s principal office is — — — — —,

— — — FINANCE COMPANY, by — — —, President.

ATTEST: — — —, Secretary.

[fol. 33] STATE OF  
County of

ss. &

On this      day of      , 19      , personally appeared before me, a notary public, to me known and known to me to be the person who executed the foregoing statement, and who by me being duly sworn acknowledged and deposed that he is      President of said Corporation; that he executed the foregoing statement on its behalf; that he executed said statement by authority of the Board of Directors of said corporation and that the seal of said corporation was thereunto affixed by like authority.

— — —, Notary Public.

STATE OF

County of

ss.:

, being duly sworn, deposes and says that he is an officer, to wit the of , the finance company which executed the foregoing statement, and that said statement is in all respects true.

Signed and sworn to before me this \_\_\_\_\_ day of 19 \_\_\_\_\_

\_\_\_\_\_, Notary Public.

[fol. 34] [Appropriate changes to be made for finance companies which are not corporations.]

5. Any registered finance company may file with the court a notice in writing of its withdrawal of its sworn statement above mentioned, and serve upon the manufacturer a copy of said notice, certified by the Clerk of the Court, and ninety days after such service or at such later date as may be stated in the notice, the finance company shall cease to be a registered finance company and the Manufacturer shall notify its dealers that such finance company has ceased to be a registered finance company.

6. The Manufacturer shall notify each finance company, which makes written specific or continuing request therefor, by registered mail of every additional rule which is incorporated in the sworn statement as provided in subdivision (11) of clause (B) of sub-paragraph (j) of this paragraph 6. The notice shall set forth the provisions of the rule and the date, not less than thirty days after the date of mailing the notice, upon which the rule shall go into effect. Any registered finance company so notified may before that date file with the court notice in writing setting forth that it withdraws its sworn statement because it does not intend to be bound by said rule, and serve upon the Manufacturer a copy of said notice, certified by the Clerk of the Court, and thereupon the finance company at once and without lapse of any time shall cease to be a registered finance company and the Manufacturer shall notify its dealers that said finance company has ceased to be a registered finance company.

7. The Petitioner, the Manufacturer or any registered

finance company shall be entitled to make application to the court, for an order herein finding and adjudging that a registered finance company has failed to comply with its sworn statement, and jurisdiction of this cause is reserved for the entry of orders upon such applications as the facts and justice may require (after such notice and hearing as the court may direct) suspending or revoking the registration of any registered company or dismissing the application. If the order shall provide that such finance company shall cease to be a registered finance company indefinitely, the finance company may, not less than six months thereafter, apply to the court for an order reinstating it as a registered finance company, and jurisdiction of this cause is reserved to grant or deny such application, or grant it upon such terms and conditions, if any, as the court may determine for the purpose of assuring further compliance with such finance company's sworn statement. Upon the entry of an order finding that a finance company has failed to comply with its sworn statement, as aforesaid, if the Manufacturer shall have made the application for such an order, or upon service upon the Manufacturer of a copy of said order certified by the Clerk of the Court if another party shall have made such application, the Manufacturer shall notify its dealers of the entry and the terms of such order and shall treat said company as a company that is not a registered finance company or as the order of the court may require.

8. Withdrawal of its sworn statement by a registered finance company and any order suspending or revoking the registration of any registered company or dismissing the application shall be applicable to all finance companies embraced by the sworn statement under clause (D) thereof.

9. Service of all papers hereinbefore required to be made upon the Manufacturer shall be made personally upon an officer of the Manufacturer, or by registered mail to the Manufacturer, at its principal office now located in Dearborn, Michigan.

10. Service of all papers upon a finance company pursuant to this decree shall be made personally or by registered mail addressed to it at its principal office as shown in its statement.

(k) The Manufacturer shall not recommend, endorse or advertise the Respondent Finance Company or any other finance company or companies to any dealer or to the public; provided, however, that nothing in this decree contained shall prevent the Manufacturer in good faith:

(1) From adopting from time to time a plan or plans of financing retail sales of new automobiles made by the Manufacturer or from time to time withdrawing or modifying the same;

[fol. 36] (2) From recommending to its dealers the use of such plans;

(3). From advertising to the public and recommending the use of such plans.

1. The Manufacturer shall notify each finance company which makes written specific or continuing request therefor by registered mail, of every plan and modification thereof that the Manufacturer shall adopt. The notice shall set forth the provisions of the plan or modification and the date, not less than thirty days after the date of mailing the notice, upon which the plan or modification shall go into effect.

2. Nothing in this decree shall prevent the Manufacturer from obtaining such assurances as it may desire from one or more finance companies before or after adoption of any plan or modification that it or they will make such plan or modification available for at least a specified period of time; provided, however, that the Manufacturer may not give such finance company or finance companies, as consideration for such assurances, any consideration prohibited by this decree.

3. The adoption or modification of any plan under this subparagraph (k) shall not preclude any aggrieved finance company or any other aggrieved person who considers that such plan or modification constitutes an unreasonable restraint of trade or commerce in automobiles under the Sherman Anti-trust Law from applying to this court to vacate such plan, and the court reserves jurisdiction to make an order upon such application approving or vacating such plan, upon the execution of proper bond against damages for an order of vacation subsequently reversed or vacated.



(1) The Manufacturer shall not use any information obtained from any dealer, his agents, representatives, servants and employees, either directly by examination or inspection of his books or records, or through financial, operating or other statements or reports or otherwise, nor shall it require disclosure of any such information, for the purpose of influencing such dealer to patronize [fol. 37] Respondent Finance Company or any other finance company or group of finance companies. Nothing herein contained shall apply to the disclosure or use of any information at the dealer's written request or for the purpose of assisting the dealer, at his specific written request, to obtain wholesale or retail financing or special facilities or services from Respondent Finance Company or any other finance company designated by the dealer in such written request.

7. The Respondent Finance Company:

(a) Shall not represent in any manner to any dealer that the Manufacturer requires him to patronize Respondent Finance Company, or that his failure to do so will result in the cancellation or termination by the Manufacturer of his contract, franchise or agreement, or in the loss of any advantage, service or facility furnished by the Manufacturer, or that Respondent Finance Company can obtain from the Manufacturer any facility, service or privilege which is not available to any other finance company, except (if Respondent Finance Company is a registered finance company) such services, facilities or privileges as result from the registration of a registered finance company, under paragraph 6 of this decree;

(b) Until further order of this court pursuant to paragraph 8 hereof, shall pay to every dealer who ceases to do business with it the amount of all reserves standing to the credit of such dealer, less any off-setting indebtedness of such dealer, such payment to be made not later than thirty (30) days after liquidation of all of the retail paper acquired from such dealer, and shall comply with any provisions relating thereto contained in any further decree entered pursuant to paragraph 8 of this decree;

(c) Shall not enter into any contract, agreement or understanding with any dealer, in connection with wholesale

financing for which a separate charge is not made, which requires the dealer to deal with Respondent Finance Company in respect of retail financing of automobiles not financed at wholesale by Respondent Finance Company;

[fol. 38] . (d) Shall not, except upon written request of the dealer or prospective dealer, arrange or agree with the Manufacturer that an agent of the Manufacturer and an agent of Respondent Finance Company shall together be present with any dealer or prospective dealer for the purpose of influencing the dealer or prospective dealer to patronize Respondent Finance Company; provided, however, that it shall not be a violation of this decree for Respondent Finance Company by joint conference with a dealer or prospective dealer and a representative of the Manufacturer to agree to furnish to such dealer or prospective dealer, because of his financial situation or requirements, special facilities or services (such term not including only the financing of the shipment or delivery of automobiles to such dealer or prospective dealer and/or only the purchase or acquisition of retail time sales paper from him in the regular course of business) and in part consideration of such special facilities or services to arrange for the dealer or prospective dealer to do business with Respondent Finance Company on an exclusive basis for such reasonable period of time as may be agreed between them.

8. In the event that a final decree not subject to further review is entered by a court of competent jurisdiction in any proceeding hereafter instituted by the United States against General Motors Corporation and General Motors Acceptance Corporation, granting relief to the Government against said corporations upon allegations substantially identical with the allegations in Paragraph 18, of Section III of the petition herein, then and in that event the court shall have jurisdiction to enter its supplemental decree herein granting such relief, if any, against the Respondent Finance Company, or any of them, with respect to the allegations of said paragraph of the petition, as justice may then require. Such proceeding shall be upon application of the United States and upon proper notice and opportunity for hearing to the respondents and the presentation of evidence (including evidence with re-

spect to the other acts and practices of the Respondent Finance Company and the Manufacturer alleged in the petition and evidence of the acts and practices of other finance companies and the volume of business done by them) relevant in determining the legality under the Sherman Anti-trust Law of the acts and practices of the Respondent Finance Company alleged in Paragraph 18 of [fol. 39] Section III of the petition and established before the court, considered in combination with any other acts and practices of the Respondent Finance Company and the Manufacturer alleged in the petition and established before the court, and relevant in determining what further decree, if any, is necessary in addition to this decree in order to require Respondent Finance Company thereafter to conduct its business in accordance with the Sherman Anti-trust Law in respect of the acts and practices alleged in said paragraph, reserving to each of the Respondent Finance Company the right to present all defenses in law or fact as to any of the matters tendered by the Government in such proceeding which would be open if this decree had not been entered, provided, however, that such supplemental decree shall be subject to review as fully as though entered as the final decree in an original non-jury action and shall be vacated upon motion of any party if not so reviewable.

9. The respondents shall not in combination or conspiracy do any act which this decree forbids or omit any act which this decree requires.

10. Upon complaint by the petitioner that any respondent has failed to comply with the provisions of the foregoing sub-paragraphs (e), (f), (i) and (l) of paragraph 6, or of sub-paragraph (d) of paragraph 7 of this decree, and the defense of such respondent that the act or acts complained of were not done for the forbidden purpose or purposes, the burden shall be upon such respondent to prove that the act complained of was done for a purpose not forbidden.

11. The Manufacturer shall mail a copy hereof to its dealers, regional and district managers and field representatives in the continental United States and Respondent Finance Company shall mail a copy hereof to its zone,

regional and branch managers in the continental United States; and said Manufacturer and Respondent Finance Company respectively shall within thirty (30) days after the entry of this decree file with this court an affidavit or affidavits showing the manner in which they severally shall have complied with this provision hereof.

12. The Respondent Finance Company shall not pay to any automobile manufacturing company and the Manufacturer shall not obtain from any finance company any money or other thing of value as a bonus or commission on account of retail time sales paper acquired by the finance company from dealers of the Manufacturer. The Manufacturer [fol. 40] shall not make any loan to or purchase the securities of Respondent Finance Company or any other finance company, and if it shall pay any money to Respondent Finance Company or any other finance company with the purpose or effect of inducing or enabling such finance company to offer to the dealers of the Manufacturer a lower finance charge than it would offer in the absence of such payment, it shall offer in writing to make, and if such offer is accepted it shall make, payment upon substantially similar bases, terms and conditions to every other finance company offering such lower finance charge; provided, however, that nothing in this paragraph contained shall be construed to prohibit the Manufacturer from acquiring notes, bonds, commercial paper, or other evidence of indebtedness of Respondent Finance Company or any other finance company in the open market.

It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1941, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered



pursuant to paragraph 12a. The court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted.

12a. It is a further express condition of this decree that:

(1) If the proceeding now pending in this court against General Motors Corporation instituted by the filing of an indictment by the Grand Jury on May 27, 1938, No. 1039, or any further proceeding initiated by reindictment of General Motors Corporation for the same alleged acts, is [fol. 41] finally terminated in any manner or with any result except by a judgment of conviction against General Motors Corporation and General Motors Acceptance Corporation therein, then and in that event every provision of this decree except those contained in this sub-paragraph (1) of this paragraph 12a of this decree, shall forthwith become inoperative and be suspended, until such time as restraints and requirements in terms substantially identical with those imposed herein shall be imposed upon General Motors Corporation and General Motors Acceptance Corporation and their subsidiaries either (a) by consent decree, or (b) by final decree of a court of competent jurisdiction not subject to further review, or (c) by decree of such court which although subject to further review continues effective. The court reserves jurisdiction upon application of any party to enter orders at the foot of this decree in accordance with the provisions of this paragraph.

(2) A general verdict of guilty returned against General Motors Corporation in said proceeding, followed by the entry of judgment thereon, shall be deemed to be a determination of the illegality of any agreement, act or practice of General Motors Corporation which is held by the trial court, in its instructions to the jury, to constitute a proper basis for the return of a general verdict of guilty. A special verdict of guilty returned against General Motors Corporation in said proceeding, followed by the entry of judgment thereon, shall be deemed to constitute a determination of the illegality of any agreement, act or practice of General Motors Corporation which is the

subject of such special verdict of guilty. A plea of guilty or nolo contendere by General Motors Corporation, followed by the entry of judgment of conviction thereon, shall be deemed to be a determination of the illegality of any agreement, act or practice which is the subject matter of such plea. The determination, in the manner provided in this clause, of the illegality of any agreement, act or practice of General Motors Corporation shall (for the purposes of clause (3) of this paragraph) be considered as the equivalent of a decree restraining the performance by General Motors Corporation of such agreement, act or practice, unless or until such judgment is reversed, or unless such determination is based, in whole or in part, (a) [fol. 42] upon the ownership by General Motors Corporation of General Motors Acceptance Corporation, or (b) upon the performance by General Motors Corporation of such agreement, act or practice in combination with some other agreement, act or practice with which the respondents are not charged in the indictment heretofore filed against them by the Grand Jury on May 27, 1938, No. 1041;

(3) After the entry of a consent decree against General Motors Corporation, or after the entry of a litigated decree, not subject to further review, against General Motors Corporation by a court of the United States of competent jurisdiction, or after the entry of a judgment of conviction against General Motors Corporation in the proceeding hereinbefore referred to, or after January 1, 1940 (whichever date is earliest), the court upon application of any respondent from time to time will enter orders:

(i) suspending each of the restraints and requirements contained in sub-paragraphs (d) to (f) and (h) to (l), inclusive, of paragraph 6 of this decree to the extent that it is not then imposed, and until it shall be imposed, in substantially identical terms, upon General Motors Corporation and its subsidiaries, and suspending each of the restraints and requirements contained in sub-paragraphs (a), (c) and (d) of paragraph 7 of this decree to the extent that it is not imposed and until it shall be imposed in substantially identical terms, upon General Motors Acceptance Corporation and its subsidiaries, either (w) by consent

decree, or (x) by final decree of a court of competent jurisdiction not subject to further review, or (y) by decree of such court which, although subject to further review, continues effective, or (z) by the equivalent of such a decree as defined in clause (2) of this paragraph; provided, however, that if the provisions of a consent or litigated decree against General Motors Corporation and its subsidiaries corresponding to sub-paragraphs (j) and (k) of paragraph 6 of this decree are different from said sub-paragraphs of this decree, then upon application of the respondents any provision or provisions of said sub-paragraphs will be modified so as to conform to the corresponding provisions of such General Motors Corporation decree;

[fol. 43] (ii) suspending each of the restraints and requirements contained in the remaining sub-paragraphs (a), (b), (c) and (g) of paragraph 6 to the extent that it is not then imposed, and until it shall be imposed, upon General Motors Corporation and its subsidiaries in any manner specified in the foregoing sub-clause (i) of clause (3), if any respondent shall show to the satisfaction of the court that General Motors Corporation or its subsidiaries is performing any agreement, act or practice prohibited to the Manufacturer by said remaining sub-paragraphs, and suspending each of the restraints and requirements contained in sub-paragraph (b) of paragraph 7 of this decree to the extent that it is not imposed, and until it shall be imposed, upon General Motors Acceptance Corporation and its subsidiaries in any said manner, if any respondent shall show to the satisfaction of the court that General Motors Acceptance Corporation is performing any agreement, act or practice prohibited to Respondent Finance Company by said sub-paragraph (b) of paragraph 7;

(iii) Suspending the restraints of sub-paragraph (d) of paragraph 7 of this decree as to Respondent Finance Company, in the event that the restraints of sub-paragraph (i) of paragraph 6 of this decree are suspended as to the Manufacturer.

(4) The right of the respondents or any of them to make any application for suspension of any provision of this

decree in accordance with the provisions of this paragraph and to obtain such relief is hereby expressly granted.

In the event that at any time prior to the date when General Motors Corporation has permanently divested itself of all ownership and control of and interest in General Motors Acceptance Corporation, General Motors Acceptance Corporation shall make available to dealers of General Motors Corporation in any area a finance charge, on all or any class of automobiles sold by dealers of General Motors Corporation, less than the finance charge then generally available to dealers of the Manufacturer within such area, nothing in this decree shall prevent the Manufacturer from making, and the Manufacturer may make, [fol. 44] adjustments, allowances or payments to or with all of its dealers in such area who agree to reduce to an amount approved by the Manufacturer (but not less than that then made available by General Motors Acceptance Corporation) the finance charges which such dealers of the Manufacturer in such area receive from any class of retail purchasers of automobiles, provided that such adjustments, allowances or payments shall not discriminate among such dealers in such area.

13. This decree shall not be pleaded in bar by the respondents in any action under the Anti-Trust laws instituted by the petitioner against them or any of them in this court or in a court in any other judicial district as to matters arising after the entry of this decree; provided, however, that this paragraph shall not apply to matters which are covered by this decree or which form a part of the cause of action herein or which are a continuance or repetition of acts or practices in which the respondents now engage which form a part of the cause of action herein.

14. Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this decree to make application to the court at any time for such further orders and directions as may be necessary or appropriate in relation to the construction of or carrying out of this decree, for the modification thereof (including, without limitation, any modification upon application of the respondents or any of them required in order to conform this decree to



any Act of Congress enacted after the date of entry of this decree), for the enforcement of compliance therewith, the punishment of violations thereof, and the carrying out of the provisions of sub-paragraph (j) and (k) of paragraph 6 hereof, and the October, 1938, Term of this court is hereby extended indefinitely for such purposes.

15. It is hereby further provided that if it shall appear to the court upon application of any respondent that, (A) in any twelve (12) months' period after the date of entry of this decree, any present or future competitor of the Manufacturer other than General Motors Corporation or Chrysler Corporation shall have sold in the United States, or any State thereof, a quantity of automobiles that shall equal or exceed 25% of the automobiles sold by the Manufacturer in the United States or said State in said period, and (B) that such competitor is doing or engaging [fol. 45] in any of the acts, practices, procedures or things then prohibited hereunder or is failing to do or engage in any act, practice, procedure or thing required hereunder, and (C) that the doing or engaging in of said acts, practices, procedures or things, or the omission of them; as the case may be, by such competitor has resulted or threatens to result in placing the Manufacturer at a competitive disadvantage in the sale of automobiles as against such competitor, and (D) that the petitioner herein has not obtained or is not proceeding with due diligence by civil or criminal proceedings to obtain an adjudication of the illegality of such acts, practices, procedures or things so performed or engaged in, or omitted to be performed or engaged in, as the case may be, under the Anti-Trust Laws, the court upon application of the respondents or any of them will enter its further order and decree providing that the provisions of this decree not so imposed upon or sought to be adjudicated against such competitor shall be inoperative and that they shall have no future force or effect in the United States or said State, as the case may be, and the right of the respondents to make such applications and to obtain such relief is hereby expressly granted.

It is hereby further provided that if it shall appear to the court upon application of any respondent that (A) in any twelve (12) months' period after the date of entry of this decree any present or future competitor of Re-

spondent Finance Company other than General Motors Acceptance Corporation or Commercial Credit Company shall have financed the retail sale of a quantity of automobiles in the United States or any State thereof that shall equal or exceed 25% of the automobiles the sale of which was financed by Respondent Finance Company in the United States or said State in said period, and (B) that such competitor is doing or engaging in any of the acts, practices, procedures or things then prohibited hereunder or is failing to do or engage in any act, practice, procedure or thing required hereunder, and (C) that the doing or engaging in of said acts, practices, procedures or things, or the omission of them, as the case may be, by such competitor has resulted or threatens to result in placing the Respondent Finance Company at a competitive disadvantage in financing the sale of automobiles as against such competitor, and (D) that the petitioner herein has not obtained or is not proceeding with due diligence [fol. 46] by civil or criminal proceedings to obtain an adjudication of the illegality of such acts, practices, procedures or things so performed or engaged in, or omitted to be performed or engaged in, as the case may be, under the Anti-Trust Laws, the court upon application of the respondents or any of them will enter its further order and decree providing that the provisions of this decree not so imposed upon or sought to be adjudicated against such competitor shall be inoperative and that they shall have no future force or effect in the United States or said State, as the case may be, and the right of the respondents to make such applications and to obtain such relief is hereby expressly granted.

16. Nothing in this decree shall limit the control by the Manufacturer of a subsidiary or limit the control by Respondent Finance Company of any subsidiary or affiliated company.

17. Whenever obligations are imposed upon the respondents by the laws or regulations of any state with which the respondents by law must comply in order to do business in such state, the court upon application of the respondents or any of them will from time to time enter orders relieving the respondents from compliance with any requirements of this decree in conflict with such laws

or regulations, and the right of the respondents to make such applications and to obtain such relief is expressly granted.

18. After four years after the date of the entry of this decree any respondent may apply to the court to vacate this decree or any supplemental decree entered pursuant to paragraph 8 hereof or to vacate or modify any provision thereof on the ground that the commission or omission of any of the agreements, acts or practices herein prohibited or required, under the economic or competitive conditions existing at the time of such application, does not constitute an unreasonable restraint of trade or commerce among the states in automobiles within the meaning of the Sherman Anti-trust Law as amended to the date of such application, regardless of whether or not such economic or competitive conditions are new or unforeseen. Jurisdiction of this cause is retained for the purpose of granting or denying such applications as justice may require and the October, 1938, Term of this court is [fol. 47] hereby extended indefinitely for such purpose and the right of the respondents to make such applications and to obtain such relief is expressly granted. The provisions of this paragraph are in addition to, and not in limitation of, the provisions of any other paragraph of this decree.

19. This decree shall have no effect with respect to respondents' acts and operations without the continental United States or to their acts and operations within the continental United States relating, exclusively, to acts and operations without the continental United States.

20. This decree shall go into effect one hundred and twenty days after the date of entry hereof, except as to the provisions of paragraphs 8, 11, and 12 hereof, which said paragraphs shall take effect as therein provided.

Thos. W. Slick, District Judge.

Dated: November 15, 1938.

[File Endorsement omitted.]

A true copy: Attest: Margaret Long, Clerk, by Margaret Long, Clerk.

[fol. 48] And afterwards, to wit, on the 21st day of December, 1940, the following further proceedings were had herein, to wit:

Come now the parties herein, and now file a stipulation with reference to modification of consent decree, which stipulation is approved and the final Decree in modification is entered by the Court, the stipulation and order of final decree in modification read in the words and figures following, to wit:

[fol. 49] IN UNITED STATES DISTRICT COURT

STIPULATION—Filed December 21, 1940

It is hereby stipulated and agreed by all the parties to this suit that the motion of the United States of America filed herewith for modification of the final decree filed November 15, 1938, shall be allowed and that the aforesaid final decree shall be modified with the result that the second paragraph of Section 12 therein shall read as follows:

It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1942, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted. The modification of this decree shall not preclude the plaintiff from seeking a further extension of the time within which the aforesaid order or decree may be entered.



And it is further stipulated and agreed that except as thus modified the decree as previously entered shall stand in full force and effect.

The aforesaid parties acknowledge that due service of notice of the filing of the aforesaid motion has been received and waive their rights to be heard on the granting thereof.

Clifford B. Longley, Wallace R. Middleton, Attorneys for Ford Motor Company, James R. Fleming, United States Attorney for the Northern District of Indiana.

Phillip W. Haberman, Attorney for Universal Credit Corporation (A Delaware Corporation) Universal Credit Company (a Delaware Corporation); Commercial Investment Trust Corporation (A Delaware Corporation) Universal Credit Company (An Indiana Corporation) Universal Credit Company, Inc. (A New York Corporation) and Commercial Investment Trust, Inc. (A New York Corporation). Edmond J. Ford, Special Assistant to the Attorney General.

[fol. 50] IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

Civil No. 8

UNITED STATES OF AMERICA, Complainant,

vs.

FORD MOTOR COMPANY, UNIVERSAL CREDIT CORPORATION,  
et al., Defendants

DECREE—IN MODIFICATION—December 21, 1940

This matter coming on to be heard by the Court on a motion of the plaintiff for modification of the final decree, and on stipulation of all parties, it appearing that all parties had been duly served with notice of the filing of the aforesaid motion and had waived their right to be heard thereon, and it having been stipulated by all the parties that the aforesaid motion should be allowed and the aforesaid decree modified as herein, and it appearing

to the Court that the allowance of such motion is just and equitable,

Now, therefore, it is ordered, adjudicated and decreed that the aforesaid final decree shall be and is hereby modified so that the second paragraph of section 12 thereof shall read as follows:

It is an express condition of this decree that notwithstanding the provisions of the proceeding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1942, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted. The modification of this decree shall not preclude the plaintiff from seeking a further extension of the time within which the aforesaid order or decree may be entered.

[fol. 51] And it is further ordered, adjudicated and decreed that except as thus modified the decree as previously entered shall stand in full force and effect.

By the Court:

Dated: December 21, 1940

(Signed) Thos. W. Slick—Judge

[fol. 52] And afterwards, to wit, on the 31st day of December, 1941, the following further proceedings were had herein, to wit:

Come now the parties herein, and now the Government files a motion for modification of decree and stipulation of parties for modification of decree, and *the court* now the Court grants the motion and the motion for modification, stipulation and Decree of Modification as modified read in the words and figures following, to wit:

[fol. 53] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S MOTION FOR MODIFICATION OF DECREE—

Filed December 31, 1941

Now comes the United States of America, through Edmond J. Ford, Special Assistant to the Attorney General, duly authorized, and moves that the second paragraph of Section 12 of the decree entered in this case as modified by decree of December 21, 1940, be further modified and changed by changing the words "on or before January 1, 1942" so that they will read "on or before January 1, 1943", and so that the whole of the second paragraph of section 12 will then read as follows:

It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1943, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted. The modification of this decree shall not preclude the plaintiff from seek-

ing a further extension of the time within which the aforesaid order or decree may be entered.

United States of America, by Edmond J. Ford,  
Special Assistant to the Attorney General, Its  
Attorney.

[fol. 54] IN UNITED STATES DISTRICT COURT

STIPULATION—Filed December 31, 1941

It is hereby stipulated and agreed by all the parties to this suit that the motion of the United States of America filed herewith for modification of the final decree filed November 15, 1938, as amended and modified by the decree of December 21, 1941, shall be allowed and that the aforesaid final decree shall be modified with the result that the second paragraph of Section 12 therein shall read as follows:

It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1943, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted. The modification of this decree shall not preclude the plaintiff from seeking a further extension of the time within which the aforesaid order or decree may be entered.



And, it is further stipulated and agreed that except as thus modified the decree as previously entered shall stand in full force and effect.

The aforesaid parties acknowledge that due service of notice of the filing of the aforesaid motion has been received and waive their rights to be heard on the granting thereof.

Clifford B. Longley, W. R. Middleton, Attorneys for Ford Motor Company, Alexander M. Campbell, United States Attorney for the Northern District of Indiana—By Luther M. Swygert, Asst. U. S. Atty.

P. W. Haberman, Attorney for Universal Credit Corporation (A Delaware Corporation) Universal Credit Company, (A Delaware Corporation): Commercial Investment Trust Corporation (A Delaware Corporation) Universal Credit Company (An Indiana Corporation) Universal Credit Company, Inc. (a New York Corporation) and Commercial Investment Trust, Inc. (a New York Corporation). Edmond J. Ford, Special Assistant to the Attorney General.

[fol. 55] IN THE DISTRICT COURT OF THE  
UNITED STATES FOR THE NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

UNITED STATES OF AMERICA, Complainant,

vs.

FORD MOTOR COMPANY, UNIVERSAL CREDIT CORPORATION,  
et al., Defendants.

Civil No. 8

DECREE IN MODIFICATION OF SECTION 12—December 30, 1941

This matter coming on to be heard by the Court on a motion of the plaintiff for modification of the final decree, and on stipulation of all parties, it appearing that all parties had been duly served with notice of the filing of the aforesaid motion and had waived their right to be heard thereon, and it having been stipulated by all the parties that the aforesaid motion should be allowed and the aforesaid decree modified as herein, and it appearing to the

Court that the allowance of such motion is just and equitable.

Now, therefore, it is ordered, adjudicated and decreed that the aforesaid final decree shall be and is hereby modified so that the second paragraph of section 12 thereof shall read as follows:

It is an express condition of this decree that notwithstanding the provisions of the proceeding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1943, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted. The modification of this decree shall not preclude the plaintiff from seeking a further extension of the time within which the aforesaid order or decree may be entered.

[fol. 56] And it is further ordered, adjudicated and decreed that except as thus modified the decree as previously entered shall stand in full force and effect.

By the Court:

Dated: December 30, 1941 (Signed) Evan A. Evans,  
Judge.

[fol. 57] And afterwards, to wit: on the 31st day of December, 1942, the following further proceedings were had herein, to wit:

Come now the parties herein, and now the Government files a motion for modification of final decree and the final decree as modified, which motion is now granted by the court, by Decree, and the motion and Decree of modification of final decree and of the final decree as modified read in the words and figures following to wit:

[fol. 58] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S MOTION FOR MODIFICATION OF FINAL DECREE  
AND OF THE FINAL DECREE AS MODIFIED—Filed December  
31, 1942

Now comes the United States of America, through Holmes Baldridge, Special Assistant to the Attorney General, duly authorized, and moves that the second paragraph of Section 12 of the decree entered in this case as modified by decree of December 30, 1941, be further modified by changing the words "on or before January 1, 1943" so that they will read "on or before January 1, 1944" and so that the whole of the second paragraph of Section 12 will then read, as follows:

It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1944, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted. The modification of this decree shall

not preclude the plaintiff from seeking a further extension of the time within which the aforesaid order or decree may be entered.

United States of America, by Holmes Baldridge,  
Special Assistant to the Attorney General, its  
Attorney.

[fol. 59] IN THE DISTRICT COURT OF THE  
UNITED STATES FOR THE NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

Civil No. 8

UNITED STATES OF AMERICA, Complainant,

vs.

FORD MOTOR COMPANY, UNIVERSAL CREDIT CORPORATION,  
et al., Defendants.

DECREE IN MODIFICATION OF FINAL DECREE AND OF THE  
FINAL DECREE AS MODIFIED—December 31, 1942

This matter coming on to be heard by the Court on a motion of the plaintiff for modification of the final decree, and on stipulation of all parties, it appearing that all parties had been duly served with notice of the filing of the aforesaid motion and had waived their right to be heard thereon, and it having been stipulated by all the parties that the aforesaid motion should be allowed and the aforesaid decree modified as herein, and it appearing to the Court that the allowance of such motion is just and equitable,

Now, therefore, it is ordered, adjudicated and decreed that the aforesaid final decree shall be and is hereby modified so that the second paragraph of section 12 thereof shall read as follows:

It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1944, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Ac-



ceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted. The modification of this decree shall not preclude the plaintiff from seeking a further extension of the time within which the aforesaid order or decree may be entered.

[fol. 60] And it is further ordered, adjudicated and decreed that except as thus modified the decree as previously entered shall stand in full force and effect.

By the Court:

Dated: December 31, 1942.

(Signed) Evan A. Evans, Acting Judge of the  
United States District Court, Northern District  
of Indiana.

[fol. 61] And afterwards, to wit, on the 7th day of January, 1943, the following further proceedings were had herein, to wit:

Come now the parties herein, and now file a stipulation for entry of decree in modification of final decree and of the final decree as modified, and the Court now grants said Decree, and the Decree in modification of final decree and of the final decree as modified read in the words and figures following, to wit:

[fol. 62] IN UNITED STATES DISTRICT COURT

STIPULATION—Filed January 7, 1943

It is hereby stipulated and agreed by all the parties to this suit that the motion of the United States of America filed herewith for modification of the final

decree and of the final decree\* as modified, shall be allowed and that the aforesaid final decree as modified shall be modified further with the result that the second paragraph of Section 12 therein shall read as follows:

It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1944, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted. The modification of this decree shall not preclude the plaintiff from seeking a further extension of the time within which the aforesaid order or decree may be entered.

And it is further stipulated and agreed that except as thus modified the decree as previously entered and modified shall stand in full force and affect, and that the foregoing modification of the aforesaid final decree and the entry of this order shall not serve or be held in any respect to waive, alter, abridge or change Section 18 of the decree or the rights of any respondent to make applications to the Court under Section 18 of said decree. The aforesaid parties acknowledge that due service of notice of the filing of the aforesaid motion has been received and waive their rights to be heard on the granting thereof.

Clifford B. Longley, Wallace Middleton, Attorneys for

Ford Motor Co. Alexander M. Campbell, U. S. Atty. for the Northern District of Indiana; By Luther M. Swygert, Asst. U. S. Atty.

R. W. Haberman, Attorney for Universal Credit Corp. et al, (heretofore listed on previous stipulations filed) Holmes Baldridge, Special Asst. to the Atty. Gen.

[fol. 63] IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

UNITED STATES OF AMERICA, Complainant,

vs.

FORD MOTOR COMPANY, UNIVERSAL CREDIT CORPORATION,  
et al., Defendants.

Civil No. 8

DECREE IN MODIFICATION OF FINAL DECREE AND OF THE  
FINAL DECREE AS MODIFIED—January 7, 1943

This matter coming on to be heard by the Court on a motion of the plaintiff for modification of the final decree, and on stipulation of all parties, it appearing that all parties had been duly served with notice of the filing of the aforesaid motion and had waived their right to be heard thereon, and it having been stipulated by all the parties that the aforesaid motion should be allowed and the aforesaid decree modified as herein, and it appearing to the Court that the allowance of such motion is just and equitable,

Now, Therefore, it is Ordered, Adjudicated and Decreed that the aforesaid final decree shall be and is hereby modified so that the second paragraph of section 12 thereof shall read as follows:

It is an express condition of this decree that notwithstanding the provisions of the proceeding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not

have been entered on or before January 1, 1944, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted. The modification of this decree shall not preclude the plaintiff from seeking a further extension of the time within which the aforesaid order or decree may be entered.

[fol. 64] And it is Further Ordered, Adjudicated and Decreed that except as thus modified the decree as previously entered shall stand in full force and effect.

And it is Further Ordered, Adjudged and Decreed That the foregoing modification of the aforesaid final decree and the entry of this Order shall not serve or be held in any respect to waive, alter, abridge or change Section 18 of said final decree or the rights of any respondent to make any applications to the Court under Section 18 of said final decree.

By the Court:

Dated: January 7th, 1943

(Signed) Acting—Evan A. Evans, Judge of the  
U. S. District Court.

[fol. 65] And afterwards, to wit, on the 15th day of January, 1943, the following further proceedings were had herein, to wit:

Comes now the United States Attorney, Alexander M. Campbell, and comes also the defendant herein, and now



the Government files a motion to make the decree in modification of final decree and of the final decree as modified, signed January, 1943, effective as of December 31, 1942, which motion is granted by the Court, by an order and the motion and order read in the words and figures following, to wit:

IN UNITED STATES DISTRICT COURT

MOTION TO MAKE DECREE IN MODIFICATION OF FINAL DECREE AND OF THE FINAL DECREE AS MODIFIED, SIGNED JANUARY 7, 1943, EFFECTIVE AS OF DECEMBER 31, 1942—

Filed January 15, 1943

Luther M. Swygert, Assistant United States Attorney for the Northern District of Indiana, respectfully shows to the Court that on December 31, 1942, he presented to this Honorable Court a petition for a decree in modification of the final decree and of the final decree as modified in the above entitled case; that upon said motion and stipulation of parties, a decree in modification of final decree and of the final decree as modified was entered on the said 31st day of December, 1942; further that thereafter another decree in modification of final decree was entered by this Court on January 7, 1943, which contained an additional paragraph which had been stipulated and agreed to by the parties hereto.

WHEREFORE, the United States of America, plaintiff herein, asks that the decree signed on January 7, 1943 be ordered to become effective as of December 31, 1942 and take the place of the order which was signed on the said December 31, 1942 as herein represented.

Dated this 15 day of January, 1943.

United States of America, Complainant, By Luther M. Swygert, Assistant U. S. Attorney for the Nor. Dis. of Ind.

[fol. 66] IN UNITED STATES DISTRICT COURT

ORDER TO MAKE DECREE IN MODIFICATION OF FINAL DECREE AND OF THE FINAL DECREE AS MODIFIED, SIGNED JANUARY 7, 1943, EFFECTIVE AS OF DECEMBER 31, 1942

Upon the petition of the complainant, United States of America, for an order to make the Decree in modification

of final Decree and of the final decree as modified signed by this Court on January 7, 1943, effective as of December 31, 1942 and to take the place of the order which was entered on the said December 31, 1942 pursuant to the petition to modify the final decree and of the final decree as modified filed herein by the complainant and the stipulation entered into by the parties hereto, said petition is now granted and

It is Ordered that the decree in modification of final decree and of the final decree as modified signed on the 7th day of January, 1943, be effective as of December 31, 1942.

It is Further Ordered that the decree in modification of final decree and of the final decree as modified signed on January 7, 1943, take the place of the decree in modification of final decree and of the final decree as modified which was entered on December 31, 1942.

Dated this 15th day of January, 1943.

Evan A. Evans, Acting Judge of the United States District Court for the Northern District of Indiana.

And afterwards, to wit, on the 30. day of December, 1943, the following further proceedings were had in the above entitled cause, to wit:

Come now the parties herein, and now the Government files a motion for modification of the final decree with affidavit attached, and file a stipulation of the final decree as modified, and the Court now grants said Decree, and the affidavit, stipulation and Final Decree as entered read in the words and figures following, to wit:

[fol. 67]. IN UNITED STATES DISTRICT COURT

GOVERNMENT'S MOTION FOR MODIFICATION OF THE FINAL DECREE AND OF THE FINAL DECREE AS MODIFIED—Filed December 30, 1943

Now comes the United States of America, through Alexander M. Campbell, United States Attorney, and Holmes Baldrige, Special Assistant to the Attorney General, duly authorized, and moves that the second paragraph of Section 12 of the decree entered in this case,

as modified be further modified by changing the words "on or before January 1, 1944" so that they will read "on or before January 1, 1945", and so that the whole of the second paragraph of Section 12 will then read as follows:

It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1945, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted. The modification of this decree shall not preclude the plaintiff from seeking a further extension of the time within which the aforesaid order or decree may be entered.

United States of America, by Holmes Baldrige,  
Special Assistant to the Attorney General.

Alexander M. Campbell, United States Attorney.

[fol. 68] IN UNITED STATES DISTRICT COURT

STIPULATION—Filed December 30, 1943

It is hereby stipulated and agreed by all the parties to this suit that the motion of the United States of America filed herewith for modification of the final decree and of the final decree as modified, shall be allowed and that the aforesaid final decree as modified shall be modified further with the result that the second paragraph of Section 12 therein shall read as follows:

It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1945, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted. The modification of this decree shall not preclude the plaintiff from seeking a further extension of the time within which the aforesaid order or decree may be entered.

And it is further stipulated and agreed that except as thus modified the decree as previously entered and modified shall stand in full force and effect, and that the foregoing modification of the aforesaid final decree and the entry of this order shall not serve or be held in any respect to waive, alter, abridge or change Section 18 of the said decree or the rights of any respondent to make applications to the Court under Section 18 of said decree.

The aforesaid parties acknowledge that due service of notice of the filing of the aforesaid motion has been received and waive their rights to be heard on the granting thereof.

Clifford B. Longley, W. R. Middleton, Attorneys for  
Ford Motor Co., Alexander M. Campbell, U. S. Atty. Nor.  
Dis. of Indiana.

R. W. Haberman, Atty. for Universal Credit Corp.  
et al. (as copied heretofore on other stipulations)  
Holmes, Baldrige, Spec. Asst. to Atty. Gen.



[fol. 69]

## STIPULATION

It is hereby stipulated among the parties signatory hereto, that since entry of the attached order has been agreed to by all parties by stipulation, it is satisfactory that the Honorable Luther Swygert, Judge of the District Court for the Northern District of Indiana, sign the attached order.

Clifford B. Longley, W. R. Middleton, Attorneys for Ford Motor Co. Alexander M. Campbell, United States Attorney for the Northern District of Indiana.

R. W. Haberman, Atty. for Universal Credit Corp., et al (as heretofore copied in other stipulations)  
Holmes Baldridge, Special Asst. to Atty. Gen.

[fol. 70] IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

Civil No. 8

UNITED STATES OF AMERICA, Complainant,

vs.

FORD MOTOR COMPANY, UNIVERSAL CREDIT CORPORATION,  
et al., Defendants.

DECREE—IN MODIFICATION OF THE FINAL DECREE AND OF THE  
FINAL DECREE AS MODIFIED—December 30, 1943

This matter coming on to be heard by the Court on a motion of the plaintiff for modification of the final decree, and on stipulation of all parties, it appearing that all parties had been duly served with notice of the filing of the aforesaid motion and had waived their right to be heard thereon, and it having been stipulated by all the parties that the aforesaid motion should be allowed and the aforesaid decree modified as herein, and it appearing to the Court that the allowance of such motion is just and equitable,

Now, therefore, it is ordered, adjudicated and decreed that the aforesaid final decree shall be and is hereby modified so that the second paragraph of section 12 thereof shall read as follows:

It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1945, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted. The modification of this decree shall not preclude the plaintiff from seeking a further extension of the time within which the aforesaid order or decree may be entered.

[fol. 71] And it is further ordered, adjudicated and decreed that except as thus modified the decree as previously entered shall stand in full force and effect.

And it is further ordered, adjudged and decreed that the foregoing modification of the aforesaid final decree and the entry of this order shall not serve or be held in any respect to waive, alter, abridge or change Section 18, of said final decree or the rights of any respondent to make any applications to the Court under Section 18 of said final decree.

By the Court: Luther M. Swygert, Judge of the  
U. S. District Court, Northern District of  
Indiana.

Dated: Dec. 30, 1943.

[fol. 72] And afterwards, to wit, on the 31st day of December, 1944, the following further proceedings were had in the above entitled cause, to wit:

Come now the parties herein, and now file a motion for modification of the final decree and of the final decree as modified, also file a stipulation herein, and the Decree in modification of the final decree and of the final decree as modified is entered and the motion, stipulation and Final decree herein read in the words and figures following, to wit:

[fol. 73] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S MOTION FOR MODIFICATION OF THE FINAL  
DECREE AND OF THE FINAL DECREE AS MODIFIED—  
Filed December 31, 1944

Now comes the United States of America, through Alexander M. Campbell, United States Attorney, and Holmes Baldridge, Special Assistant to the Attorney General, duly authorized, and moves that the second paragraph of Section 12 of the decree entered in this case, as modified, be further modified by changing the words "on or before January 1, 1945," so that they will read "on or before January 1, 1946" and so that the whole of the second paragraph of Section 12 will then read as follows:

It is an express condition of this decree that notwithstanding the provisions of the proceeding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1946, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or

decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted. The modification of this decree shall not preclude the plaintiff from seeking a further extension of the time within which the aforesaid order or decree may be entered.

United States of America, by Holmes Baldrige,  
Special Assistant to the Attorney General, Alexander M. Campbell, U. S. Atty.

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[fol. 74] AFFIDAVIT IN SUPPORT OF MOTION FOR MODIFICATION OF FINAL DECREE AND OF THE FINAL DECREE AS MODIFIED

I, HOLMES BALDRIDGE, being duly sworn, do hereby make oath and depose as follows:

I have read the attached motion for modification of the final decree and of the final decree as modified in the above styled cause and am familiar with the facts therein set forth and the circumstances under which the aforesaid motion is filed.

Wherefore, I hereby make oath that the statements therein set forth are true. The sources of my information are original documents and facts learned in the handling of the matters referred to in the aforesaid motion as Special Assistant to the Attorney General of the United States.

Holmes Baldrige.

Sworn to and subscribed before me this 15th day of December, 1944. Dorothy J. Heale, Notary Public, District of Columbia. (seal)

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[fol. 75] AFFIDAVIT IN SUPPORT OF MOTION FOR MODIFICATION OF FINAL DECREE AND OF THE FINAL DECREE AS MODIFIED

I, JAMES E. KEATING, an Assistant United States Attorney for the Northern District of Indiana and on behalf of the above named plaintiff, and for and on behalf of Alexander M. Campbell, United States Attorney for the Northern District of Indiana, being duly sworn do hereby make oath and depose as follows:



I have read the attached motion for modification of the final decree and of the final decree as modified in the above styled cause and am familiar with the facts therein set forth and the circumstances under which the aforesaid motion is filed.

Wherefore, I hereby make oath that the statements therein set forth are true. The sources of my information are original documents and facts learned in the handling of the matters referred to in the aforesaid motion as an Assistant United States Attorney for the Northern District of Indiana.

James E. Keating.

Sworn to and subscribed before me this 30th day of December, 1944. Marie M. Shultz, Notary Public, St. Joseph Co. Ind. My comm. expires July 14, 1948 (seal)

[fol. 76] IN UNITED STATES DISTRICT COURT

STIPULATION—Filed December 31, 1944

It is hereby stipulated and agreed by all the parties to this suit that the motion of the United States of America, filed herewith for modification of the final decree and of the final decree as modified, shall be allowed and that the aforesaid final decree as modified shall be modified further with the result that the second paragraph of Section 12 therein shall read as follows:

It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1946, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modifica-

tion or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted. The modification of this decree shall not preclude the plaintiff from seeking a further extension of the time within which the aforesaid order or decree may be entered.

And it is further stipulated and agreed that except as thus modified the decree as previously entered and modified shall stand in full force and effect, and that the foregoing modification of the aforesaid final decree and the entry of this order shall not serve or be held in any respect to waive, alter, abridge or change Section 18 of the said decree.

The aforesaid parties acknowledge that due service of notice of the filing of the aforesaid motion has been received and waive their rights to be heard on the granting thereof.

Clifford B. Longley, W. R. Middleton, Attorneys for the Ford Motor Company, Alexander M. Campbell, U. S. Atty. Nor. Dis. of Indiana.

R. W. Haberman, Atty. for Universal Credit Corp.  
et al (heretofore copied on other stipulations)  
Holmes Baldridge, Spec. Act. to the Atty. Gen.

[fol. 77] IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

Civil No. 8

UNITED STATES OF AMERICA, Complainant,

vs.

FORD MOTOR COMPANY, UNIVERSAL CREDIT CORPORATION,  
et al., Defendants.

DECREE—IN MODIFICATION OF THE FINAL DECREE AND OF THE  
FINAL DECREE AS MODIFIED—December 31, 1944.

This matter coming on to be heard by the Court on a motion of the plaintiff for modification of the final decree,

and on stipulation of all parties, it appearing that all parties had been duly served with notice of the filing of the aforesaid motion and had waived their right to be heard thereon, and it having been stipulated by all the parties that the aforesaid motion should be allowed and the aforesaid decree modified as herein, and it appearing to the Court that the allowance of such motion is just and equitable,

Now, therefore, it is ordered, adjudicated and decreed that the aforesaid final decree shall be and is hereby modified so that the second paragraph of section 12 thereof shall read as follows:

It is an express condition of this decree that notwithstanding the provisions of the proceeding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1946, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted. The modification of this decree shall not preclude the plaintiff from seeking a further extension of the time within which the aforesaid order or decree may be entered.

[fol. 78] And it is further ordered, adjudicated and decreed that except as thus modified the decree as previously entered shall stand in full force and effect.

And it is further ordered, adjudged and decreed that

the foregoing modification of the aforesaid final decree and the entry of this order shall not serve or be held in any respect to waive, alter, abridge, or change Section 18, of said final decree or the right of any respondent to make any application to the Court under Section 18 of said final decree.

By the Court: Luther M. Swygert, Judge.

Dated: December 31, 1944.

[fol. 79] And afterwards, to wit, on the 31st day of December, 1945, the following further proceedings were had in the above entitled cause, to wit:

Come now the parties herein, and now the United States files a motion for modification of the final decree and of the final decree as modified, together with an affidavit in support of said motion, whereupon an order is entered for hearing, which motion for modification, affidavit and order thereon, reads in the words and figures following, to wit:

[fol. 80] IN THE DISTRICT COURT FOR THE UNITED STATES  
FOR THE NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

Civil Action No. 8

UNITED STATES OF AMERICA, Complainant,

vs.

FORD MOTOR COMPANY, Defendant.

MOTION FOR MODIFICATION OF THE FINAL DECREE AND OF THE FINAL DECREE AS MODIFIED—Filed December 31, 1945

The United States of America, plaintiff in the above entitled action, by Alexander M. Campbell, United States Attorney for the Northern District of Indiana, and William C. Dixon, Special Assistant to the Attorney General of the United States, both acting under the direction of the Attorney General, represent and move as follows:

On November 15, 1938, a final decree was entered by consent in this case. The second paragraph of Paragraph 12 provided that if an effective final order or decree should



not have been entered by January 1, 1941, requiring General Motors Corporation to divest itself of all ownership and control of General Motors Acceptance Corporation, then nothing in the decree should preclude the manufacturer from acquiring and retaining ownership of, control over, or an interest in any finance company.

On December 21, 1940, this Court, on motion of plaintiff for modification of the final decree and on stipulation of the parties, entered an order modifying the second paragraph [fol. 81] of Paragraph 12 by changing the date therein set forth with respect to entry of an effective final order or decree against General Motors Corporation from January 1, 1941, to January 1, 1942.

On December 31, 1941, this Court, on motion of plaintiff for modification of the final decree and of the final decree as modified and on stipulation of the parties, entered an order modifying the second paragraph of Paragraph 12 of the decree by changing the date therein set forth with respect to entry of an effective order or decree against General Motors Corporation from January 1, 1942, to January 1, 1943.

On December 31, 1942, this Court, on motion of the plaintiff for modification of the final decree and of the final decree as modified on December 31, 1941, and on stipulation of the parties, entered an order modifying the second paragraph of Paragraph 12 of the decree entered in this case as modified by the decree of December 30, 1941, by changing the date therein set forth with respect to entry of an effective order or decree against General Motors Corporation from January 1, 1943, to January 1, 1944.

On January 7, 1943, this Court, on motion of the plaintiff for modification of the final decree and of the final decree as modified, and on stipulation of the parties, entered an order modifying the second paragraph of Paragraph 12 of the decree entered in this case, as modified by decree of December 31, 1942, by changing the date therein set forth with respect to entry of an effective final order or decree against General Motors Corporation from January 1, 1943, to January 1, 1944. The order of the court as entered on January 7, 1943, was on motion of the plaintiff, rendered effective as of December 31, 1942, and said modification of the final decree as modified by order of

this Court on January 7, 1943, took the place of the decree in modification of the final decree and of the final decree as modified theretofore entered by this Court on December 31, 1942.

[fol. 82] On December 30, 1943, on motion of the plaintiff for modification of the final decree and of the final decree as modified and on stipulation of the parties, this Court entered an order modifying the second paragraph of Paragraph 12 of the decree entered in this case as modified by decree of January 7, 1943, by changing the date therein with respect to entry of an effective final order or decree against General Motors Corporation from January 1, 1944, to January 1, 1945.

On December 31, 1944, on motion of the plaintiff for modification of the final decree and of the final decree as modified, and on stipulation of the parties, this Court entered an order modifying the second paragraph of Paragraph 12 of the decree entered in this case as modified by the decree of December 30, 1943, by changing the date therein with respect to entry of an effective final order or decree against General Motors Corporation to January 1, 1946.

The consent decree entered in this case contains numerous provisions, the effect of which is that while the various prohibitions of the decree are to be presently effective, the ultimately binding effect is to be dependent upon the outcome of certain proceedings by the plaintiff under the antitrust laws against General Motors Corporation and its subsidiary finance company, General Motors Acceptance Corporation, in the case of *United States v. General Motors Corporation, et al.*, Civil No. 2177, pending in the District Court of the United States for the Northern District of Illinois, Eastern Division. The consent decree was entered herein without submitting the issues raised by the proceeding against respondents to the test of litigation. The decree provides, in substance, that the plaintiff's litigation against General Motors Corporation shall be substituted for such test and that the prohibitions of the decree shall later be adjusted to accord with the adjudications made and the results achieved in the proceedings against General Motors Corporation.

[fol. 83] The primary purpose of the provisions of the decree relating to affiliation was to have the right of the

plaintiff to prohibit affiliation between an automobile manufacturer and a finance company, under the circumstances set forth in the complaint upon which the consent decree is based, determined by the outcome of proceedings by the plaintiff to terminate the existing affiliation between General Motors Corporation and General Motors Acceptance Corporation. A subsidiary purpose was to protect respondents against undue delay by the plaintiff in prosecuting such proceedings by providing a specified date for bringing them to a conclusion. Circumstances arising since the entry of the decree, not attributable to undue delay or laches by the plaintiff, have prevented bringing these proceedings to a conclusion by the date specified in Paragraph 12, or by the dates specified in Paragraph 12 as five times modified by this Court. The essential purpose of the decree would be defeated if, under these circumstances, the prohibition against affiliation were allowed to lapse prior to final determination of the plaintiff's proceeding to end the affiliation between General Motors Corporation and General Motors Acceptance Corporation. The plaintiff represents that it has proceeded with due diligence since the Court's order of December 31, 1944, extending the bar against affiliation to January 1, 1946, to procure a decree requiring General Motors Corporation to divest itself of ownership and control of General Motors Acceptance Corporation; that the entry of such a decree is dependent upon proving certain involved facts and establishing numerous disputed principles of law; that since the entry by this Court of the order of December 31, 1944, the plaintiff has been continuously engaged in the taking of depositions in its case against General Motors Corporation, at the instance and demand of the General Motors Corporation, throughout all sections of the United States; that approximately 220 depositions had been taken in the case by July 9, 1945, [fol. 84] and General Motors Corporation had indicated an intention at that time to take the depositions of approximately 200 additional witnesses.

The plaintiff, on July 9, 1945, in an effort to limit the taking of further depositions in order to bring said case to trial, filed a motion with the court in the General Motors case to vacate or to limit notices to take depositions by the General Motors Corporation in the General

Motors case, and said motion to restrict the taking of depositions on behalf of General Motors Corporation was heard by the court on July 17 and 18, 1945. No ruling has yet been made by the court on said motion, but the plaintiff and General Motors Corporation have endeavored by agreement to expedite and limit the taking of depositions in said case in the interest of bringing the General Motors case to trial at the earliest possible date.

Under Paragraph 14 of the consent decree in the instant suit, this Court retained jurisdiction of the cause for the purpose of enabling any party to apply to the Court at any time for modification of the decree and, aside from this provision, the Court inherently has the right to modify a decree, whether entered by consent or otherwise, as the ends of justice may require.

The plaintiff avers that it has exercised due diligence and will continue to exercise due diligence in securing an early trial date of the proceeding against General Motors Corporation and others now pending in the Northern District of Illinois, Eastern Division, but that said cause cannot be brought to final conclusion by January 1, 1947.

The plaintiff, therefore, moves that the second paragraph of Paragraph 12 of the consent decree in this case as modified five times by this Court be again modified effective as of January 1, 1946, in such manner that the words of said paragraph, to wit, "on or before January 1, 1946," be modified so as to read, "on or before January 1, 1947," or in the alternative, "on or before January 1, 1946," be modified so as to read, "until such time as the Government's civil action requiring General Motors [fol. 85] Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, shall have been finally disposed of by a court of last resort," with the result that said decree shall be so modified that the second paragraph of Paragraph 12 shall read as follows:

"It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this Paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1947, requiring



General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then in that event, nothing in this decree shall preclude the manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to Paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted."

Or, in the alternative, that said decree shall be so modified that the second paragraph of Paragraph 12 shall read as follows:

"It is an express condition of this decree that the bar against affiliation by defendant manufacturer with any finance company shall continue in effect until such time as the proceedings now pending in the United States District Court for the Northern District of Illinois, Eastern Division, styled United States of America v. General Motors Corporation, et al., Civil No. 2177, have been disposed of by a court of final resort; provided however, that in the event the plaintiff fails to prosecute said suit to final conclusion expeditiously, defendants shall have the right, upon making proper showing to this Court, to acquire an interest in a finance company."

William C. Dixon, William C. Dixon; Special Assistant to the Attorney General.

Alexander M. Campbell, Alexander M. Campbell, United States Attorney.

[fol. 86] STATE OF INDIANA  
County of Lake, ss.:

James E. Keating being first duly sworn upon his oath says that he is an assistant United States District Attorney in and for the Northern District of Indiana, and as such makes this affidavit for and on behalf of the above mentioned plaintiff and that a copy of the above and foregoing motion was mailed to Clifford B. Longley, 1400 Buhl Building, Detroit, Michigan, on December 29, 1945, and that the said Clifford B. Longley is an attorney for the above mentioned defendant.

James E. Keating

Subscribed and sworn to, before me, the undersigned, this 31st day of December, 1945.

Adele Anderson, Deputy Clerk, United States District Court for the Northern District of Indiana.

[fol. 87] IN THE DISTRICT COURT OF THE UNITED STATES  
AFFIDAVIT IN SUPPORT OF MOTION FOR MODIFICATION OF  
FINAL DECREE AND OF THE FINAL DECREE AS MODIFIED—  
Filed December 31, 1945

I, William C. Dixon, being duly sworn, do hereby make oath and depose as follows:

I have read the attached Motion for Modification of the Final Decree and of the Final Decree as Modified in the above-styled cause and am familiar with the facts therein set forth and the circumstances under which the aforesaid motion is filed.

Wherefore, I hereby make oath that the statements therein set forth are true. The sources of my information are original documents and facts learned in the handling of the matters referred to in the aforesaid motion as Special Assistant to the Attorney General of the United States.

William C. Dixon

Sworn to and subscribed before me this 28th day of December, 1945. Nellie E. Bishop, Notary Public, District of Columbia.

[fol. 88] IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

Civil Action No. 8

UNITED STATES OF AMERICA, Complainant,

vs.

FORD MOTOR COMPANY, Defendant.

ORDER FOR HEARING—Filed December 31, 1945

The plaintiff, United States of America, in the above entitled cause, having filed its motion for modification of Final Decree and Final Decree as modified herein and having applied for a hearing on said motion.

The court now, pursuant to the provisions of Section 6(d) of the Rules of Civil Procedure, for the causes shown in said application sets said hearing of said motion for modification of final decree for 2:00 o'clock P. M., Monday, February 11, 1946, in the United States District Court Room located at South Bend, Indiana, and further

Orders that notice of said hearing be immediately mailed by the plaintiff to counsel for the defendant.

And the undersigned having heretofore acted as one of the counsel for and on behalf of the United States of America prior to becoming judge of the above designated court, after having set the time for a hearing on the above described motion, herewith disqualifies himself from acting further in the above entitled cause.

Luther M. Swygert, Judge

December 31, 1945, Hammond, Indiana.

[fol. 89] IN UNITED STATES DISTRICT COURT

ORDER OF APPOINTMENT—Filed January 10, 1946

Public interest requiring, I hereby designate and assign the Honorable Patrick T. Stone, United States District Judge for the Western District of Wisconsin, to hold United States District Court in the Northern District of Indiana for thirty days beginning January 22, 1946, and for such further time as may be necessary to dispose of

business undertaken during the above named designated period and pending at the end of said period.

Evan A. Evans, Senior United States Circuit Judge  
in and for the Seventh Judicial Circuit.

Chicago, Illinois, January 9, 1946.

[fols. 90-91] IN UNITED STATES DISTRICT COURT

ORDER—February 6, 1946

James E. Keating, Assistant United States Attorney for the Northern District of Indiana, having represented to this court that a ninety day extension of time is necessary in order to enable counsel for the respective parties above designated to formulate their issues, wherein the plaintiff seeks a further extension of time on the bar against affiliation of the Ford Motor Company with certain finance companies, and a hearing on a petition to that effect having been heretofore set to be heard by the undersigned on February 11, 1946, the said hearing is herewith continued to May 13, 1946, and at that time the said hearing shall be had in the United States District Court at Hammond, Indiana at 2:00 P.M.

Patrick T. Stone, Judge, U. S. District Court, Northern District of Indiana.

Dated: February 6, 1946.

[fols. 92-93] IN UNITED STATES DISTRICT COURT

[File endorsement omitted.]

[Title omitted.]

RESPONSE OF RESPONDENT, FORD MOTOR COMPANY, TO MOTION OF GOVERNMENT FOR EXTENSION OF TIME OF BAR AGAINST AFFILIATION—Filed May 4, 1946

Now Comes Respondent, Ford Motor Company, by its attorneys, Clifford B. Longley and Wallace R. Middleton, and states that it is opposing the motion of the United States in the above entitled cause for an extension of time on the bar against affiliation of this Respondent with certain finance companies and for the grounds of such opposition refers to and incorporates herein, as though set forth herein at length, the matters alleged in its own



motion filed in this cause for the entry at the foot of the decree in this cause of an order or decree permitting this Respondent to acquire a finance company.

Clifford B. Longley (sgd) Wallace R. Middleton,  
1400 Buhl Building, Detroit, Michigan, Attorneys  
for Respondent, Ford Motor Company

Received copy of the above instrument this 4 day of  
May, 1946.

James E. Keating Attorney for United States of  
America

[fol. 94] IN UNITED STATES DISTRICT COURT

[Title omitted.]

NOTICE OF MOTION—Filed May 4, 1946

To: Alexander N. Campbell, United States Attorney for  
the Northern District of Indiana, South Bend, Indiana.  
Wendell Berge, Assistant Attorney General, Department  
of Justice, Washington, D. C.

To: Scheer, Scheer & Taylor, 408 Oddfellows Building,  
South Bend, Indiana. Samuel S. Isseks, 30 Broad Street,  
New York, New York. Alphonse A. Laporte, One Park  
Avenue, New York, New York. Attorneys for Respondents  
Commercial Investment Trust Corporation, et al.

Please Take Notice that at the United States Court-  
house in the City of Hammond and State of Indiana, or  
such other place as the court may assign, at ten o'clock  
in the forenoon of May 20, 1946, or as soon thereafter as  
counsel can be heard, the attached motion of the Respond-  
[fol. 95] ent, Ford Motor Company, will be brought on for  
hearing.

(sgd.) Clifford B. Longley (sgd.) Wallace R. Mid-  
dleton, 1400 Buhl Building, Detroit, Michigan,  
Attorneys for Respondent, Ford Motor Company.

Crumpacker, May Carlisle & Beamer, 811 J.M.S. Bldg.,  
South Bend, Indiana.

Received copy of the above instrument this 4 day of  
May, 1946.

James E. Keating, Attorney for United States of  
America.

[fol. 96] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO SUSPEND AND MODIFY PROVISIONS OF CONSENT  
DECREE—Filed May 4, 1946

Respondent, Ford Motor Company, a Delaware corporation, by its attorneys, Clifford B. Longley and Wallace R. Middleton, moves,

A. That the provisions of subparagraphs (i) and (k) of paragraph 6 of said decree be suspended until they shall be imposed in substantially identical terms upon General Motors Corporation and its subsidiaries, that subparagraph (e) of paragraph 6 of said decree be modified to permit Respondent to recommend, endorse or advertise any plan or finance company to any dealer or the public either in conjunction with or independently of any finance company, until the terms of said subparagraph (e) without such modification shall be imposed upon General Motors Corporation and its subsidiaries, and that the provisions of subparagraph (d) of paragraph 7 of said decree be suspended until they shall be imposed in substantially identical terms upon General Motors Acceptance Corporation and its subsidiaries, either (x) by consent decree, or (y) by final decree of a court of competent jurisdiction not subject to further review, or (z) by decree of such court, which, although subject to further review, continues effective; and

[fol. 97] B. That an order be entered pursuant to paragraph 12 of said decree that nothing therein shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in said decree or in any order of modification or suspension thereof; and

C. That the Court grant such other or further relief as may be proper.

The reasons why this relief should be granted are hereinafter set forth.

I. Reasons why relief prayed for in paragraph A above should be granted.

1. Paragraph 12a of said decree, referring to a proceeding then pending in this court against General Motors Corporation instituted by the filing of an indictment by the Grand Jury on May 27, 1938, No. 1039, provides in part as follows:

"(2) A general verdict of guilty returned against General Motors Corporation in said proceeding, followed by the entry of judgment thereon, shall be deemed to be a determination of the illegality of any agreement, act or practice of General Motors Corporation which is held by the trial court, in its instructions to the jury, to constitute a proper basis for the return of a general verdict of guilty. A special verdict of guilty returned against General Motors Corporation in said proceeding, followed by the entry of judgment thereon, shall be deemed to constitute a determination of the illegality of any agreement, act or practice of General Motors Corporation which is the subject of such special verdict of guilty. A plea of guilty or nolo contendere by General Motors Corporation, followed by the entry of judgment of conviction thereon, shall be deemed to be a determination of the illegality of any agreement, act or practice which is the subject matter of such plea. The determination, in the manner provided in this clause, of the illegality of any agreement, act or practice of General Motors Corporation shall (for the purposes of clause (3) of this paragraph) be considered as the equivalent of a decree restraining the performance by General Motors Corporation of such agreement, act or practice, unless or until such judgment is reversed, or unless such determination is based, in whole or in part, (a) upon the ownership by General Motors Corporation of General Motors Acceptance Corporation, or (b) upon the performance by General Motors Corporation of such agreement, act or practice in combination with some other agreement, act or practice with which the respondents are not charged in the indictment heretofore filed against them by the Grand Jury on May 27, 1938, No. 1041;

[fol. 98] "(3) After the entry of a consent decree against General Motors Corporation, or after the

entry of a litigated decree, not subject to further review, against General Motors Corporation by a court of the United States of competent jurisdiction, or after the entry of a judgment of conviction against General Motors Corporation in the proceeding hereinbefore referred to, or after January 1, 1940 (whichever date is earliest), the court upon application of any respondent from time to time will enter order;

(i) suspending each of the restraints and requirements contained in sub-paragraphs (d) to (f) and (h) to (l) inclusive, of paragraph 6 of this decree to the extent that it is not then imposed, and until it shall be imposed, in substantially identical terms, upon General Motors Corporation and its subsidiaries, and suspending each of the restraints and requirements contained in sub-paragraphs (a), (c) and (d) of paragraph 7 of this decree to the extent that it is not imposed and until it shall be imposed in substantially identical terms, upon General Motors Acceptance Corporation and its subsidiaries, either (w) by consent decree, or (x) by final decree of a court of competent jurisdiction not subject to further review, or (y) by decree of such court which, although subject to further review, continues effective, or (z) by the equivalent of such a decree as defined in clause (2) of this paragraph; provided, however, that if the provisions of a consent or litigated decree against General Motors Corporation and its subsidiaries corresponding to sub-paragraphs (j) and (k) of paragraph 6 of this decree are different from said sub-paragraphs of this decree, than upon application of the respondents any provision or provisions of said sub-paragraphs will be modified so as to conform to the corresponding provisions of such General Motors Corporation decree;

(ii) suspending each of the restraints and requirements contained in the remaining sub-paragraphs (a), (b), (c) and (g) of paragraph 6 to the extent that it is not then imposed, and until it shall be imposed, upon General Motors Corporation and its subsidiaries in any manner specified in the foregoing sub-clause



(i) of clause (3), if any respondent shall show to the satisfaction of the court that General Motors Corporation or its subsidiaries is performing any agreement, act or practice prohibited to the Manufacturer by said remaining sub-paragraphs, and suspending each of the restraints and requirements contained in sub-paragraph (b) of paragraph 7 of this decree to the extent that it is not imposed, and until it shall be imposed, upon General Motors Acceptance Corporation and its subsidiaries in any said manner, if any respondent shall show to the satisfaction of the court that General Motors Acceptance Corporation is performing any agreement, act or practice prohibited to Respondent Finance Company by said sub-paragraph (b) of paragraph 7;

(iii) suspending the restraints of sub-paragraph (d) of paragraph 7 of this decree as to Respondent Finance Company, in the event that the restraints of sub-paragraph (i) of paragraph 6 of this decree are suspended as to the Manufacturer.

(4) The right of the respondents or any of them to make any application for suspension of any provision of this decree in accordance with the provisions of this paragraph and to obtain such relief is hereby expressly granted."

[fol. 99]. 2. A judgment of conviction was entered against General Motors Corporation in such proceeding in 1939 and such judgment of conviction was preceded by a general verdict of guilty returned against General Motors Corporation in such proceeding.

3. A copy of the instructions of the trial court to the jury in such proceedings is hereto attached and made a part hereof as though set forth herein at length. It is apparent from such instructions that the trial court held therein that the only agreements, acts or practices of General Motors Corporation constituting a proper basis for the return of a general verdict of guilty were those which coerced General Motors dealers to finance retail sales of cars with a company with whom they would not have done such financing had they been free of such coercion. This

necessarily follows from the following language contained in the instructions (on pages 5986 and 5987):

"In other words, the Government has no right to complain, and it may not complain of the defendants' rights to limit its sales of cars to persons whom it may select, its right to determine who it shall sell to, its rights to determine upon what terms it will sell, its right to pick its own dealers.

It can only complain if the defendants do sufficient of these acts charged in the indictment as constitute duress upon the dealer to accomplish a result that would have otherwise not have been accomplished, and to make a dealer do something that he would not have done of his own free will.

That almost, is the question in this case—whether the dealer could act as a free man; whether he could act of his own free will.

The defendants say: 'We never imposed any restrictions upon that freedom of action.'

The Government says it did and there is that question. If it did—if the defendants did that sort of thing—and if it resulted in an unreasonable restriction and unreasonable restraint of interstate commerce, then you would have a right to find them guilty.

If they did not do it, this lawsuit is at an end, and that is a question which you have got to decide."

In other words, the court, by saying: "if they did not do it, this lawsuit is at an end", said that the only questions in the case were whether there was coercion on the dealer and such coercion resulted in an unreasonable restraint of interstate commerce and trade.

[fol. 100] There is nothing in the instructions to the jury from which it can be concluded that the conduct enjoined in subparagraphs (i) and (k) of paragraph 6 and subparagraph (d) of paragraph 7 of said decree and performed by General Motors Corporation was held by the trial court to constitute a proper basis for the return of a general verdict of guilty.

On the contrary, the trial court in its instructions to the jury in such proceeding against General Motors Corporation made the following affirmative statements:

"It is not unreasonable for the General Motors Company to have a finance company. \* \* \* They have a perfect right to have a finance company and to recommend its use."

"It is not charged here that to recommend the use of General Motors Acceptance Corporation there is anything wrong."

"You know you have heard of the terms: exposition; persuasion; argument; coercion."

They are different steps. They are graduated steps that I suppose every salesman goes through, except perhaps the last.

In exposition one may expound the merits of that which he has to sell; he may explain its nature and by his exposition make a clear picture of what he has.

By persuasion he may endeavor to persuade the person to whom he is talking to accept that which he has to offer.

There is little advancement in his further progress, to argue.

Persuasion means something softer than argument, perhaps, but he may argue with him and argue with him the respective merits of his product and other products being offered to the person to whom he makes his offer.

All of these are proper. He may not go beyond that and use something that is within his power to use as a club to coerce the person to accept that which he has to offer.

"I think I said to you that the defendants may expound the alleged advantages of General Motors Acceptance Corporation; they may explain fully the characteristics of its operations, as they claim they exist, they may point out the advantages; they may expound all of those things; they may persuade; they may use persuasion in their conversations, in their communications with their dealers; they may even argue. These things are all proper. They have a right, as I have said, to determine to whom they shall sell their automobiles and to whom they shall not. Those things constitute no violation of the law."

"\* \* \* and the charge in this indictment is, that this coercion, this misuse that has proceeded, accord-

ing to the indictment beyond exposition, persuasion and argument, has resulted in a situation where the commerce in General Motors Corporation, the products of General Motors, from state to state, has been unreasonably restricted and restrained."

[fol. 101] 4. Even the Department of Justice has admitted that, at least as of the time of the entry of the decree (and nothing has happened since to alter the facts or the law), the injunction against advertising in subparagraph (k) of paragraph 6 of said decree went beyond the provisions of the Anti Trust Law:

(a) Thurman Arnold, then Assistant Attorney General, in the release dated November 7, 1938, identified below, referred to the provisions of the decree prohibiting advertising and said:

"Such a method of advertising has never been held to be violative of the antitrust laws, and the legality of its use, in the absence of positive fraud, has not been questioned."

"There are no precedents which compel the adoption of such restrictions on advertising."

(b) Holmes Baldridge, Special Assistant to the Attorney General, stated on page 13 of the stenographic minutes referred to below:

"It is the Department's idea, the one with respect to advertising, the other with respect to adoption of a Code of Fair Competition, that this public benefit goes far beyond anything that we could hope to accomplish in a litigated case, besides eliminating the discriminatory practices and coercion complained of by the independents in this suit."

5. No consent decree or other decree of a court of competent jurisdiction has ever imposed upon General Motors Corporation or its subsidiaries, either in substantially identical terms or otherwise, any of the restraints and requirements contained in subparagraphs (j) and (k) of paragraph 6 of the decree in this cause nor has a decree of either type ever imposed upon General Motors Acceptance Corporation or its subsidiaries, either in substantially identical terms or otherwise, any of the re-



straints and requirements contained in subparagraph (d) of paragraph 7 of the decree in this cause.

6. It is, therefore, clear that pursuant to the terms of the decree respondents have not only the right to apply for the relief prayed for in paragraph A above but also the right to obtain such relief.

[fol. 102] 7. The purpose of paragraph 12(a) was recognized by the Department of Justice at the time of the entry of the decree:

(a) Robert H. Jackson, then Assistant Attorney General, in a letter to Henry M. Hogan, Assistant General Counsel of General Motors Corporation, dated November 29, 1937, and which may be found in the "Hearings Before the Committee on the Judiciary of the House of Representatives" dated January 25, 1938, wrote in part as follows:

"The decree will also contain provisions designed to protect the defendants from competitive disadvantages which they may experience in the event that the restrictions contained in the decree are not applied to their competitors."

(b) Thurman Arnold, the then Assistant Attorney General, in a letter to Phillip W. Haberman, Counsel for the Commercial Investment Trust Corporation, dated November 5, 1938, stated in part as follows:

"I have told you throughout our conferences that the position of the Department of Justice is that no decree under the Sherman Antitrust Act should be such as to place the defendants at a competitive disadvantage in the industry, and that the Government's policy is to enforce the antitrust laws so as to restore and maintain free competition in the industry in which such decrees are entered."

(c) Holmes Baldridge, Special Assistant to the Attorney General, and Thurman Arnold stated at pages 15 and 16 of the stenographic minutes of the hearing before Hon. Thomas W. Slick, United States District Judge for the Northern District of Indiana, at the time the final decree was submitted:

"Mr. Baldrige—

Paragraph 12 states what we might designate as so-called estoppel clause; provided that, neither the Ford nor Chrysler decrees shall continue to be effective in the event of failure to convict General Motors and the General Motors Acceptance in the trial of the Criminal Cause. That provision was put in for this reason, if the Department is unable to stop these alleged discriminations and coercion, against General Motors, it would place Ford and Chrysler, who have agreed to give them up, at a decided distinct disadvantage, so that the effectiveness of this decree is made contingent upon the conviction of the General Motors and the General Motors Acceptance. The decrees will become effective one hundred twenty days after entering, but the effectiveness of both will be discontinued in the event of failure to convict the General Motors and General Motors Acceptance Company."

[fol. 103] "The Court: I wonder what possible effect that might have on the prosecution of the other defendants, to say: this shall not be effective unless you convict certain other defendants?"

"Mr. Arnold: We had to do that in order to prevent the General Motors securing a competitive advantage over the other companies. They are highly competitive; they have cars in the same price-class, and, if General Motors can continue with the practices that the Government is opposed to, when the Ford and Chrysler must desist, it places them at a distinct competitive advantage over their competitors."

(d) Thurman Arnold, in a public statement approved by Homer Cummings, the Attorney General, pointed out at page 11 of a release of the Department of Justice dated November 7, 1938, and published by the United States Government Printing Office:

"General Motors has not proposed an acceptable plan for a consent decree, and therefore the case against that group must be vigorously prosecuted. In the meantime the voluntary decrees proposed by

Chrysler and Ford will go into effect, if accepted by the Court. However, the failure of General Motors to participate has made it necessary to insert provisions in the decrees insuring the Ford and Chrysler groups that General Motors will not be put on a favored basis in the event that the prosecution against it is unsuccessful. To do otherwise might enable General Motors to enjoy an unwarranted competitive advantage over Ford and Chrysler resulting from the voluntary cooperation of the latter companies with the Government. Obviously, in view of the predominant position in the automobile field occupied by these three companies, the Department cannot restrain two of them only, unless it subsequently succeeds in securing relief against the practices of the third."

8. The decree, however, was so framed that no showing of competitive disadvantage would be required as a condition to the granting of relief therein provided, and no such showing should be required by the court. It is none the less true, however, that respondent is being placed at a competitive disadvantage by the provisions of subparagraphs (i) and (k) of paragraph 6 of the decree and by subparagraph (e) of paragraph 6 to the extent that it also enjoins the matters covered by said subparagraphs (i) and (k).

[fol. 104] This competitive disadvantage arises out of the failure of the decree to provide respondent with adequate means to protect its goodwill, while companies not so enjoined are not similarly handicapped.

No person has the right to hold out to the public that he is an authorized dealer of respondent except by the express permission, grant or franchise of respondent. Such franchise is granted in respondent's sales agreements with its dealers and as a result dealers holding this franchise are empowered to represent to the public that they are authorized dealers selling genuine Ford cars and parts. This representation is accomplished by the use of respondent's trade mark, the display of authorized signs, and the publication of advertisements containing the script word "Ford" and the designation "Authorized Sales and Service".

Respondent has the right to limit the use of its trade

mark to dealers who are competent and enjoy good business reputations. This right is zealously guarded, for it is one of the principal means which is available to respondent to protect its goodwill. The protection of this right, by prompt prosecution of those who display the trade mark without authority and by the withdrawal of the franchise of dealers that do not live up to the standards it implies, has enhanced the value of the right and induced the public to attach increasing significance to it. For these reasons, the public assumes that such dealers are selected by respondent and that the business conducted on the premises is done in accordance with standards which are approved by respondent.

The financing of a purchase is an important part of each sale. If the customer does not spontaneously suggest a particular finance company, the dealer will propose one, or, worse yet, make out the papers for a particular company without discussing the point at all. In the light of the circumstances discussed above, it is only natural that, if any part of such a transaction originating on premises displaying respondent's trade mark should turn out to the customer's disadvantage, the customer will feel that there has been some relaxation of the standards attached to the use of such trade mark.

[fol. 105] Respondent needs the relief prayed for in this motion so that it can try to persuade its dealers to patronize finance companies whose participation in transactions originating on the dealers' premises will not imply any such relaxation of standards and so that it can advertise plans of financing and particular finance companies. It feels that such advertising will in a large measure counteract any tendency of retail purchasers to attribute unfortunate experiences arising from the use of plans or companies not so advertised to a deterioration in the significance of respondent's trade mark.

9. Under the language of the trial court in its instructions to the jury in the General Motors criminal case, General Motors is free to recommend, endorse and advertise plans of financing and a particular finance company and can visit a dealer in the company of representatives of such finance company in order to persuade the dealer to patronize that finance company. General Motors Corporation, therefore, has means to protect its good will which are not available to this respondent.



The effect of the decree has therefore, in respondent's opinion, been the loss of some of the good will which it enjoyed before the decree was entered and the consequent loss of sales by this respondent to other car manufacturers who have not been bound by the provisions of a similar decree. The percentage of car sales by this respondent to total car sales by all manufacturers throughout the United States has declined since the entry of said decree and respondent attributes this decline in part to the effect of the decree.

10. This relief has not been as necessary during the last few years as it is right now. During the war no cars have been sold to the public at large and as a result no such problems have existed. Now, however, there is a large backlog of customer demand, supported by an unprecedented amount of purchasing power, and the competition for this business among automobile [fol. 106] manufacturers is more aggressive than ever. In addition, a new manufacturer has entered the field with a large amount of capital. Most of these competitors are not burdened with the onerous restrictions imposed by this decree, and it looks as though they never would be burdened therewith. It is therefore considered unfair and inequitable for this court to continue in effect all these prohibitions and requirements that actually go beyond the requirements of the Sherman Anti-Trust Law.

II. Reasons why relief prayed for in paragraph B above should be granted.

1. The second paragraph (unnumbered) of paragraph 12 of the decree, in this cause provides as follows:

"It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1941, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest

in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted."

2. The date, January 1, 1941, in such paragraph has been extended by orders of this court to January 1, 1946. A motion by the government for a further extension to January 1, 1947 is now pending before this court. Such further extension is being opposed by this respondent and this motion is being made by respondent for an order pursuant to the above quoted language of the decree that nothing therein contained shall preclude Respondent from acquiring and retaining ownership of and/or control over or interest in any finance company or from dealing with such finance company and with the [fol. 107] dealers in the manner provided in this decree or in any order of modification or suspension thereof.

3. Under the terms of the decree, the lapse of the bar against affiliation is automatic unless it is extended by consent of the respondents. Extension by consent has been effected through January 1, 1946. But respondents have not consented to any further extension thereof and in the absence of such consent the decree is clear that the injunction ceases and that the respondents have a right not only to apply for but also to *obtain* an order or decree to that effect at the foot of the previous decree.

4. No showing of undue delay in the prosecution by the Government of its civil case against General Motors Corporation is required nor is any showing of competitive disadvantage to respondents as a result of the continuation of the bar against affiliation necessary, in order to entitle respondents to the relief prayed for. However, it is clear that there has been undue delay in such prosecution and that respondents are at a competitive disadvantage as a result thereof.

5. The consent decree was entered in this case on November 15, 1938. Seven years and five months have passed since then and the General Motors civil case has apparently not yet gone to trial. In the meantime, the greatest war this world has ever suffered has been commenced, fought and completed. This by itself is undue delay, whoever or whatever may have caused it.

6. Respondent is placed at a real competitive disadvantage by its inability to acquire a finance company. This disadvantage arises from several causes among which are the following:

(1) Respondent can not offer to the dealers a plan of financing which it considers more satisfactory from the point of view of sales appeal and particularly from the point of view of selling Respondent's own products. The financing of the retail sales of automobiles is an integral part of the sale, one of the factors which the customer [fol. 108] takes into consideration in determining what kind of a car he is going to buy. If for example, he is in doubt as to whether to buy one of Respondent's cars or the car of a competitor of Respondent, he may be persuaded to buy the car of the competitor because he likes the financing plan offered by the dealer in that car better than he likes that offered by Respondent's dealer. If General Motors Corporation feels that the plans offered by existing finance companies do not have sufficient sales appeal or are not particularly adapted to promote the sale of General Motors products, then General Motors Corporation through General Motors Acceptance Corporation can offer, advertise and recommend to its dealers and the public a plan which supplies the sales appeal considered lacking in the plans offered by other finance companies. Respondent is not able to do this. Its dealers have to choose between the plans that are offered by existing finance companies. These finance companies finance all makes of cars and their plans are not particularly adapted to the sale of Respondent's products. Respondent feels that it could offer through a finance company which it owned and controlled a plan of financing better adapted to the sale of its products and it feels that its inability to do this in the past has resulted in the loss of sales evidenced by the decrease in the percentage of cars sold by this Respondent to all cars sold by all automobile manufacturers.

(2) In order for an automobile manufacturer to sell cars it is necessary for him to have a large number of dealers. The competition between automobile companies to obtain dealers is always energetic and aggressive. The company which is able to offer to its dealers special financial assistance is often in a better position to obtain dealers than one which is not able to offer this assistance. General Motors Corporation through General Motors Acceptance Corporation is in a position to extend to dealers working capital loans which are more generous and timely than similar loans made available by other finance companies and banks. This Respondent because it does not have such a finance company is not in a position to do this. Nor is it in a position to absorb the entire cost of floor planning new [fol. 109] cars and trucks for its dealers while General Motors Corporation through General Motors Acceptance Corporation can do so. This constitutes a serious handicap to this Respondent in the market for new dealers.

7. Respondent is therefore confronted with the necessity of taking some steps to overcome this competitive disadvantage. To do this, respondent may have to acquire at least a controlling interest in an existing finance company or organize a new company. Respondent does not feel that it should be asked to determine what course of action it intends to follow until this injunction has been terminated. The acquisition of a controlling interest in an existing finance company might be effected by the purchase from time to time of outstanding stock in that company. Respondent does not feel that it should be placed in the position of having to say to the court now or at any future time that it has determined what it desires to do and wants to be free to proceed. That statement alone would hamper its efforts to buy into a company at a normal market price. Furthermore, if the court decided that respondent were not entitled to this relief until such time as it could tell the court that it had definite plans, it would be in the position of having to adopt a plan and then await a decision of the court and possibly an appeal, which would probably take many months, before it could proceed with the execution of the plan. In the meantime circumstances might change so that respondent would have to alter its plan. Paragraph 12 of the decree was prepared as it was because of these very considerations. It was not



contemplated then that respondent would have to disclose its plans before the relief provided therein would be granted. The relief should, therefore, be granted without such disclosure.

(sgd.) Clifford B. Longley, Clifford B. Longley;  
(sgd.) Wallace R. Middleton, Wallace R. Middleton,  
1400 Buhl Building, Detroit, Michigan, Attorneys for Respondent, Ford Motor Company.

[fol. 110] INSTRUCTIONS IN GENERAL MOTORS CASE

The Court: Gentlemen of the Jury:

You have sat for some five weeks in the trial of this cause and I congratulate you upon the care with which you have listened, the attention you have given to the witnesses and to counsel and to the Court in the conduct of the trial.

Unfortunately, you have been called from your homes and your vocations, but under our system of jurisprudence, as I said to you in the beginning, the Jury is the one essential element of this agency of the Government which can fulfill the purpose of that agency for, after all, you are, as both counsel have said to you, the sole judges of the facts in this cause.

We have preserved in this country the institution of the jury trial, an institution which has come to us through a thousand years of development of Anglo-Saxon jurisprudence, and under that system the jury are the triers of the facts; and, as I said to you in the beginning, being triers of the facts and endeavoring to administer the law properly as given to you by the Court, and applying the facts thereto, discharging that essential obligation, it is [fol. 111] absolutely essential, if we are to have the kind of administration of law that we should have, that you should be inspired by no motives other than the desire to reach, so far as humanly possible, the truth in the case. That, and that alone, is your task.

No question of politics, no question of church, no question of religion, no question of affiliation with one group of citizens or lack of affiliation, no question of spite, fear, or favor, or prejudice, or sympathy must be permitted to enter into your decision in this case.

As I said to you in the beginning, and again I repeat to you, that you may not lose sight of that essential duty upon your part, that essential standard of conduct, in reaching a decision.

You have been fortunate in the fact that this case has been tried by gentlemen and they have been gentlemen in every sense of the word. The trial has moved along expeditiously and you might have undergone much more unfortunate experience in that respect.

This indictment was returned, Gentlemen of the Jury, on May 7, 1938. It charges that the Defendants entered [fol. 112] into a conspiracy to restrain unduly interstate commerce in General Motors automobiles. That indictment grows out of a clause in our Constitution which gives to the Federal Government jurisdiction over interstate commerce and, obviously, interstate commerce is commerce that passes from one State to the other, and the Congress which determines the policy of legislation, and with the policy of legislation the courts have nothing to do and you have nothing to do; but Congress, acting within its province in determining policy or legislation, has indicated many years ago this statute, under this provision in our Federal Constitution, and that statute provides in Section 1 that every contract or combination or conspiracy in restraint of trade or commerce among the several States or with foreign nations is hereby declared to be illegal.

The Supreme Court of the United States many years ago said that that meant, that to constitute such violation of the law, the restraint must be unreasonable in character, otherwise the Court concluded that the statute would be largely meaningless; so, consequently, we can read the statute as if it were written that every conspiracy in [fol. 113] unreasonable restraint of trade or commerce among the several States is illegal.

Section 8 provides that the word "person" or "persons", wherever used in this Act, shall be deemed to include corporations and associations existing under or by virtue of law; and

Section 14 provides whenever a corporation shall violate any of the articles and provisions of the anti-trust laws, such violation shall be deemed to be also that of the individual directors, officers, or agents of such corporation

who shall have authorized or done any of the acts constituting in whole or in part such violation.

Under those sections this indictment is brought against four corporations: The General Motors Corporation, the General Motors Sales Corporation, the General Motors Acceptance Corporation, and the General Motors Acceptance Corporation of Indiana.

In addition, there are seventeen individuals who are indicted. There were originally nineteen, but this indictment has been dismissed as to two. I think there was the suggestion of death as to one—perhaps not—but, at least, you are no longer concerned with the persons named in the indictment under the names of Arthur B. Purvis [fol. 114] and E. W. Berger. Those two individuals you have no concern with.

The Defendants with whom you are concerned, who are individuals, are George F. Benkhart, M. E. Coyle, James D. Deane, Nelson C. Dezendorf, August Freise, Richard H. Grant, Roy Hill, W. E. Holler, W. F. Hufstader, H. J. Klingler, William S. Knudsen, Russell Leshner, Ralph W. Moore, W. J. Mougey, John J. Schumann, Jr., Alfred P. Sloan, Jr., and G. I. Smith.

So this indictment was brought, as I said, was returned by the Grand Jury on May 7, 1938. It is divided into a great many paragraphs, I am not going to read it to you, but I am going to summarize it as well as I can.

The first 27 paragraphs set out a general background of the methods used in getting cars from the manufacturer to the ultimate purchaser, including the number of cars manufactured and sold, the place of manufacture, the method of sale to the dealers, in interstate commerce, the manner of supplying funds for both wholesale and retail sales of cars, by whom such funds are supplied, the relations [fol. 115] between the manufacturer, the dealers, and the finance companies, the necessity of financing through financing companies, the sale at wholesale and retail of new and used automobiles, and the sources of supply for used automobiles sold in the industry.

That, in substance, is the first 27 paragraphs of the indictment.

Paragraphs 28 to 33, inclusive, describe the names of the corporate and individual defendants whose names I have just read to you.

Paragraph 34, which I shall read to you, because that is the charging paragraph is as follows:

"And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that continuously for many years heretofore, to and including the day of the finding and presentation of this indictment, at and within the Northern District of Indiana, and in the aforesaid division thereof, said defendants and other persons and corporations to the Grand Jurors unknown, unlawfully have engaged in a conspiracy in restraint of the aforesaid trade and commerce among [fol. 116] the several States in Cadillac, LaSalle, Buick, Oldsmobile, Pontiac, and Chevrolet automobiles;"

There is the charging part. That is the charge in this case, that the Defendants have entered into a conspiracy to restrain unreasonably interstate commerce, that is, commerce between the several States or among the several States in these products of the General Motors Company; and the paragraph further alleges that they have conspired to do all of these things, do all of the acts and things and to use all means necessary and proper to make such restraint effective, including the means, methods and things hereinafter more particularly alleged.

Then follows some 30 paragraphs, running from Paragraph 36 or 37 to Paragraph 66, in which the Grand Jury has alleged that as a part of the conspiracy the Defendants have arranged and agreed amongst themselves to do the things set out in those paragraphs, and they may be summarized briefly as follows:

[fol. 117] That is, that the indictment charges they have conspired in pursuance of this conspiracy to restrict or restrain unduly and unreasonably interstate commerce in these cars; they have used these means, or done these acts to force General Motors dealers to use General Motors Acceptance Corporation for financing purposes, and sales of automobiles, and not to use outside finance companies by requiring them to agree to do so as a condition to entering into contracts with them, making such contracts for one year only with the right to cancel without cause, in order to exercise it for that purpose, authorizing a cancellation of contracts, and cancelling contracts and further by refusing and failing to furnish and in holding up the trans-



portation, shipment, delivery of automobiles to dealers and further by examining dealers' records concerning financing and in coercing dealers, to permit such examination and to disclose such information, procuring same from employees of dealers without the dealers' knowledge and sometimes by bribery and requiring dealers to justify outside [fol. 118] financing, and further by using other means deemed necessary, appropriate and effective, and that they have discriminated in various ways between General Motors dealers using General Motors Acceptance Corporation for financing purchases and sales of automobiles and those using outside finance companies in regard to delivery and financing of automobiles that they have given General Motors Acceptance Corporation quarters for its financial business, information concerning the sale and delivery of automobiles to dealers, instruments necessary for its security in connection with financing and before delivery, while refusing all of said things to outside finance companies and imposing onerous requirements upon them as to the payment for automobiles.

To refuse.

To establish and fix a price or charge to be collected by General Motors Acceptance Corporation from purchasers of Cadillac, La Salle, Buick, Oldsmobile, Pontiac and Chevrolet automobiles, and of used automobiles handled by General Motors dealers, in all transactions financed by those corporations (said price or charge being [fol. 119] known as the GMAC differential); and to pay to the dealer a substantial part thereof, as a rebate, participation and payment for diverting the business of financing such purchases to General Motors Acceptance Corporation and away from other automobile finance companies.

To regularly and continuously conceal, and induce, assist and require dealers to conceal, from purchasers of said automobiles, the fact that such rebates, participations and payments have been and will be included in and paid out of the GMAC differential, which began about 1925 and has had the effect of compelling outside finance companies to adopt it, with the result that GMAC has paid to dealers more than one hundred millions of dollars since 1925.

Then, after the recital of those various acts and means we have a paragraph 68. That paragraph I charge you now, gentlemen, is surplusage in this indictment. You will

ignore it. It contains some references to the Ford Motor Company, to the Universal Credit Company, to the Commercial Investment Trust Corporation and the Chrysler [fol. 120] Corporation and the Commercial Credit Corporation.

That paragraph I am convinced is purely surplusage in this indictment and is of no relevancy and of no pertinence and therefore you will ignore it in considering the indictment.

[fol. 121] Paragraph 70 states that the dealers have complied with said intimations, suggestions, threats of cancellation, and statements of facts in order to save substantial investment in their business.

Paragraph 71 alleges that the effect of the conspiracy has been to burden, obstruct, and unduly restrain the said interstate trade and commerce in General Motors automobiles.

And perhaps I should read to you again Paragraph 72, which is again in the nature of a charging paragraph.

And so the Grand Jurors aforesaid, upon their oath aforesaid do say that the Defendants and other persons and corporations to the Grand Jurors unknown, throughout the three years next preceding the finding and presentation of this indictment, unlawfully have engaged in a conspiracy in restraint of trade and commerce among the several States in General Motors automobiles.

So the essential thing in this case, gentlemen, is that charge, and conspiracy, to restrain, hinder, restrict unduly and unreasonably the commerce from State to State in [fol. 122] General Motors automobiles in violation of this Sherman Act.

All else in this indictment is ends to that means, that is the charge in this case, and before we proceed to a consideration of application of the statute to the evidence in this case and the law applicable thereto, I think I should say something about what constitutes a conspiracy.

A conspiracy is a contract in writing, if you wish; oral, if you wish; without either writing or oral words, perhaps; a tacit understanding, perhaps. It is a joint understanding between parties, between two or more parties, each of whom know what it is, know what the understanding is, and each of whom assents to it.

It need not be in writing. It need not be by word of

mouth. There need be no evidence of a formal contract. But if two or more persons, by whatever means, have come to an understanding which they knowingly assented to and knowingly participated in which has for its purpose the violation of the law, that is a conspiracy.

[fol. 123] If that undertaking intends to accomplish an illegal end, if its existence leads to that inevitable conclusion, it is a conspiracy; but it is also a conspiracy if that undertaking, so understood, so assented to, intends to accomplish a legal purpose, by illegal means, either of such state of facts will constitute a controversy under our jurisprudence.

And so in this case, when you come to consider the question of conspiracy to restrain interstate commerce, unduly, unreasonably, it is your purpose to inquire from all of the evidence and to determine from all of the evidence whether there was any contract, any agreement, any undertaking, tacit or otherwise, whereby these parties entered into acts and did acts which inevitably led to an undue restriction of interstate commerce.

If they did that, they are guilty; if they did not, they are not. So that is the ultimate question that you have got to decide.

But, as I have said to you, you are the sole judges of the facts in that respect.

It may be that in my remarks to you, in my effort to [fol. 124] clarify the issues to you in this case, in my efforts to be of aid to you in the solution of the problem that confronts you, that you may infer from something that I have said that I may have some opinion upon this subject. It may seem to you that I imply certain opinions, but let me assure you, if I do, it is wholly unintentionally, and let me assure you further that if you should find evidence of such intention upon my part, it is in no wise controlling upon you because, after all, as I have said before, you are the sole judges of the facts and the sole triers of the facts.

Neither the judge of this court nor anybody else has any right to interfere with your conclusions upon those facts.

Now, having this issue before us, having presented the question, the sole question that is in this case, namely, that question of whether the Defendants by tacit under-

standing did otherwise, knowingly assented and entered into an arrangement, whereby they brought about an undue restriction of interstate commerce in General Motors automobiles, I think I have read to you the statute; I think [fol. 125] I have defined for you sufficiently the nature of a conspiracy.

Let me say a little something to you about all of this evidence that has been submitted: First of all, the mere sizes of these corporations is no crime, nor, on the other hand, is it any defense. Size has nothing to do with it. It is solely a question of whether or not the acts charged in this indictment have been proved and whether they amount to an undue restriction of interstate commerce in automobiles; nor is it necessary for the Government to prove all of the acts alleged.

It is essential that they prove this conspiracy, and if you believe that the evidence is sufficient to sustain that conclusion, then you have a right to find that there is a conspiracy; but it is not essential to that conclusion that each and every one of these acts charged in the indictment be shown and, of course, we are not necessarily limited in our solution of this question by the amount of commerce involved.

I take it that under this statute undue restriction of any part of interstate commerce is a violation of the law.

[fol. 126] If a group of Indiana farmers, or two Indiana farmers, should stop a truck coming from Illinois loaded with corn because they did not want any Illinois corn in Indiana, that is an unreasonable interference with interstate commerce although it is only one truckload of corn.

It is not the question of size, when you come to determine whether a thing is unreasonable or not. It may be one of the elements that you may consider. But whether a thing is unreasonable or not depends upon the character of the acts which you are considering.

It is not unreasonable for the General Motors Company to have a finance company. It is not unreasonable for the General Motors Company to have contracts with its dealers for a year or to have a cancellation clause in them. They have a perfect right to have a finance company and to recommend its use. They have a perfect right to cancel a contract from their dealer as long as they are not performing any unreasonable act.



[fol. 127] They have a right to determine whom they will sell their cars to, and they have a right to determine whom they will not sell their cars to because cars are their product and they are their property and no law compels them to sell them to any man they don't want to sell them to; but that is not the charge in this case. The charge is not that by having difficulty in contracts in itself, these defendants did anything wrong; it is not charged here that to recommend the use of GMAC there is anything wrong; it is not charged here that cancellation for cause is anything wrongful; but the Government's theory in this case is irrespective of these contracts and independent of them and outside of them the conditions have been asserted that they, under the designation of those to the grand jurors unknown, the actions have been such that the possibility, the ability to cancel, the ability to refuse to renew a contract, have been used as clubs upon the dealers to force them to use GMAC and that these acts that are complained of were acts that were used to force the dealers to use GMAC, the Government insists that these acts inspired by that motive have been such as to result in cancellations that otherwise would [fol. 128] not have occurred; in discriminations that would not otherwise have occurred in the shipment of cars in interstate commerce and in refusals to renew that would not otherwise have occurred, and in the use of GMAC when it otherwise would not have been used.

In other words, the Government has no right to complain, and it may not complain of the defendants' right to limit its sales of cars to persons whom it may select, its right to determine who it shall sell to, its rights to determine upon what terms it will sell, its right to pick its own dealers.

It can only complain if the defendants do sufficient of these acts charged in the indictment as constitute duress upon the dealer to accomplish a result that would have otherwise not have been accomplished, and to make a dealer do something that he would not have done of his own free will.

That, almost, is the question in this case—whether the dealer could act as a free man; whether he could act of his own free will.

The defendants say:

[fol. 129] "We never imposed any restrictions upon that freedom of action."

The Government says it did and there is that question. If it did—if the defendants did that sort of thing—and if it resulted in an unreasonable restriction and unreasonable restraint of interstate commerce, then you would have a right to find them guilty.

If they did not do it, this lawsuit is at an end, and that is a question which you have got to decide.

You know, you have heard of the terms:

Exposition;

Persuasion;

Argument;

Coercion.

They are different steps. They are graduated steps that I suppose every salesman goes through, except perhaps the last.

In Exposition one may expound the merits of that which he has to sell; he may explain its nature and by his exposition make a clear picture of what he has.

By persuasion he may endeavor to persuade the person to whom he is talking to accept that which [fol. 130] he has to offer.

There is little advancement in his further progress, to argue.

Persuasion means something softer than argument, perhaps, but he may argue with him, and argue with him the respective merits of his product and other products being offered to the person to whom he makes his offer.

All of these are proper.

He may not go beyond that and use something that is within his power to use as a club to coerce the person to accept that which he has to offer.

Now, you have listened here to the evidence of the Government and of the defense.

The Government has produced witnesses whose testimony you will remember probably with greater clarity than myself.

There has been represented to you in the argument of counsel and those witnesses have testified as to things that have occurred in support of the indictment, in various parts of the United States, in California, in Georgia on

the south, and Duluth, Minnesota on the north, and [fol. 131] somewhere in Ohio on the east; they have testified as to conversations with the defendants and various of their representatives and you have heard their testimony.

[fol. 132] Against that the Defendants have offered their testimony that they never have used duress, that they never have insisted, have never used this right of cancellation, this one-year contract, the right to renew it or not to renew it or used the other things as clubs.

The easiest way I know to express it to you is that they never have used it to force dealers to use GMAC.

I shall not discuss the evidence on either side. That is your province. If the Government has proved the acts beyond all reasonable doubt that are averred in this indictment, you have a right to find these Defendants guilty.

If it has not proved them so, you should acquit them, and I don't know that I can make the issue any clearer to you than I have done.

You must remember that, after all, this coercion, if you find that coercion exists, then the ultimate question is; Has that resulted in unreasonable restraint of interstate commerce? And that is a question for you to determine from all of the evidence. Those are the issues.

Now, I have said to you that you are the judges of the [fol. 133] facts. As judges of the facts, you are the judges of the credibility of the witnesses. You determine how much credit you shall give to any witness who has testified here. You cannot refuse to credit any witness arbitrarily without cause, but the question of credibility, how much credit, how much credence you shall place in any witness lies wholly within your own judgment, that is, reasonably exercised and not arbitrarily exercised.

You have a right to, and you should, take into consideration the interest, or lack of interest of the witness who testifies; his manner upon the witness stand; the reasonableness or the unreasonableness of his testimony; the fact, if it be a fact, that he has been disputed by other credible testimony; the fact, if it be a fact, that he has been corroborated by other credible testimony; and all other facts and circumstances surrounding his

testimony; and, from all of those, determine what credit you shall extend him.

The indictment is no evidence against the Defendants. It is no presumption against the Defendants, it raises no presumption. Under our system of jurisprudence, a man [fol. 134] charged with violation of the law is presumed to be innocent and that presumption controls until and unless it is overcome by proof of guilt by the evidence beyond all reasonable doubt.

A reasonable doubt is not a conjectural or an illusionary doubt that you may conjure up in your minds in order to acquit a defendant, but it is a substantial doubt based upon an arising out of all of the evidence. A reasonable doubt is such a doubt as would cause you to hesitate in your ordinary business transactions. We frequently say,—and I think it is as good a statement as any,—proof beyond a reasonable doubt is proof to a moral certainty.

If you are morally certain that a man is guilty, you should find him guilty. If you are not morally certain, you should acquit him. But all of these things must be based upon and arise out of the evidence.

When I spoke of the credibility of the witnesses, I did not mention the Defendants particularly. The Defendants are to be tested and they are to be tested in their credibility by the same rule that applies to other witnesses. [fol. 135] You have a right to consider the fact that they are interested in the case, but you cannot refuse to credit them simply because they are defendants. You must test them by the same rule that you test the credibility of other witnesses.

You have a right, in considering this cause, to find all of the Defendants guilty, to find them all not guilty. You have a right to find part of them guilty and part of them not guilty.

You are not concerned with punishment. The jury should not permit that to enter into their consideration because, fortunately or unfortunately for me, the law puts that duty of determining the punishment upon the Judge of the Court.

I might say something about the statute of limitations, which has been mentioned in the argument. The Government is permitted to go back indefinitely to show a conspiracy, that there can be no conviction for a con-



spiracy unless it is shown to have had existence within three years prior to the return of the indictment or unless acts were performed in furtherance of it within that [fol. 136] period.

It appears in this case that the corporate organization of these Defendants have changed, some of them have changed in the period of years in which the evidence has run. Some of them came into existence in 1936, the General Motors did it not? There were formerly separate corporations, the Chevrolet Corporation and certain other corporations. They are now a part of the General Motors Corporation.

But a conspiracy may vary in its members from day to day. Five of you may be in a conspiracy to rob a bank on Monday; one of you may drop out on Tuesday, and a new man may take his place on Wednesday. Of course, the man who drops out is liable for nothing that occurs afterwards. But every person who joins a conspiracy, after its formation, understands it and becomes a part and parcel of it and knowingly assents to it, becomes liable as a conspirator from the date of such knowing, conscious participation.

Counsel made arguments to you today. They have a right to do that and they are supposed to do that. They are advocates, and every man under our system of juris-[fol. 137] prudence is entitled to an advocate; but what they say to you is not evidence. You are to consider solely the evidence in the case.

Something has been said about direct and indirect evidence. Direct evidence is direct testimony or direct documentary evidence. Indirect evidence is proof of circumstances and in controverted cases, as in other cases, it is proper if the evidence justifies it to find that a controversy exists purely from circumstantial evidence; but, in determining the weight of all evidence, circumstantial or direct—after all—you must bear in mind that your evidence must prove to you beyond all reasonable doubt the guilt of the acts charged in the indictment.

I was asked to charge you that the failure of the defendant to testify is no evidence and raises no presumption against him. That is the law. There is no question about it and you shall keep that in mind.

I have been asked to advise you that if a witness testifies falsely in any one material respect, you may disregard

all of his testimony except and unless he is corroborated [fol. 138] by other credible evidence. I may have said that to you before.

Now, I think I have given you about all the help that I can in your problems.

Are there any suggestions or exceptions, gentlemen, from counsel?

[fol. 139] Mr. Smith: If your Honor please, I would like to except to the charge that says the defendants can be convicted under Section 14 of the Act.

I think that the Government agreed to limit it to Section 1.

The Court: I did not say they could be convicted under that, but I read that from your brief.

Mr. Smith: I am afraid not, if your Honor please. 14 is out. The argument was made, if your Honor please, that the inclusion of 14 would make the indictment duplicitous and the Government said they were not conducting this prosecution—

The Court: That was not before me.

Mr. Baldridge: If the Court please, you are reading from Section 14 of the Sherman Act and from the Clayton Act.

~~The~~ Court: I read this:

“Section 14. Whenever a corporation shall violate any of the penal provisions of the anti-trust laws, such violation shall be deemed to be also that of the individual directors, officers or agents of such corporation who shall have authorized, ordered, or done any of the acts constituting in whole or in part such violation . . . .”

Mr. Ballard: That is the Clayton Act, your Honor.

[140] The Court: Well, it is still a part of the anti-trust Act.

Mr. Smith: It makes it duplicitous.

The Court: Why?

Mr. Smith: There are two sections, one under Section 1, and one under Section 14.

Mr. Ballard: No crime is charged under section 14 of the Clayton Act.

The Court: Well, the defendants' brief says this:

“The applicable portions of the Sherman law and the Clayton Act are as follows—”

Mr. Smith: I can explain that.

The Government countered by saying we were wrong because they did not make any claim under Section 14; so your Honor has read it right, but you will see by referring to their briefs that they disclaim that section 14 because mention of 14 would render the indictment duplicitous.

The Court: I don't think it would, but if you have taken that position—

Mr. Baldridge: That has been the Government's position, your Honor.

The Court: The Jury may ignore what I said about Section 14. It will be ignored.

[fol. 141] Mr. Smith: I would like to except, if your Honor please, to so much of your charge as says that the size is not to be considered in any part of interstate commerce.

The Court: I did not say it was to be considered. If I said that to the Jury, it is a mistake, Mr. Smith. What I meant was this:

Size of a corporation, or size of an undertaking is no crime; nor is it of itself a defense; it is a proper element to be considered, in considering all of the evidence.

Mr. Smith: I meant, if your Honor please, the size of the restraint—not the size of the corporation. Your Honor gave an illustration.

The Court: You mean the amount?

Mr. Smith: Your Honor gave the illustration of the Illinois corn.

The Court: You may have an exception to that. I think I am right about it and I so instruct the Jury.

Is there anything else?

Mr. Smith: Yes, if your Honor please.

I request you to charge that in order to have any jurisdiction in this Court it is necessary for the Government [fol. 142] to show the commission of an overt act within the three-year period of the statute.

The Court: I believe I did charge that.

Mr. Smith: Since 1935.

The Court: If I did not charge that, I charge you now, gentlemen, that no matter when, if you find there was a conspiracy, in order to convict in this case you must find that it existed, continued within the three-year period prior to the return of this indictment and that some overt act

was performed within this district, within that time, in the Northern District of Indiana which includes South Bend and various other cities in the Northern part of Indiana.

I guess that covers that.

Is there anything else, gentlemen?

Mr. Smith: The other thing, if your Honor please, is an exception to your Honor's refusal to charge as requested.

The Court: Well, I will say as to the request to charge:

I received from the Government Friday some request to charge.

I received from the Defendants some requests to charge. [fol. 143] I received an amended copy of the defendants' request to charge this morning, 91 pages in length; and the Government's request is quite lengthy, and I felt that I could charge this Jury better and simplify for them the issue more efficiently by speaking to them orally as I have done.

I have not intended to refuse any proper instruction that was tendered. I have hoped to cover all the subject matter that I thought was pertinent in this trial. If there is any one thing that you think of that I have not covered, I will be glad to consider it.

Gentlemen, you have the forms of verdict submitted. You will retire with the officer and return your verdict.

There are three forms of verdict, as follows:

[fol. 144] "We, the Jury, find each and all the defendants guilty in manner and form as charged in the indictment"; and

"We, the Jury, find each and all of the defendants not guilty"; and

"We, the Jury, find the defendants (naming them) guilty in manner and form as charged in the indictment"; and

"We, the Jury, find the defendants (naming them) not guilty."

You will retire.

Mr. Ballard: Will your Honor give instructions to the alternates on the jury?

The Court: Yes, I will do that.

You will retire with the officer and consider your verdict, and the two alternates who have sat with us will now be excused and you may retire to the Marshal's office or to the



Clerk's office and receive your compensation, and you may be excused from serving on the jury of this court for the period of three years and the Clerk will enter that notation upon the record.

So, you may pass out first, gentlemen, if you will, you two alternates.

[fol. 145] Now, Mr. Marshal, you have the same officers in charge of this jury that you had all of the time?

The Marshal: Yes, sir, your Honor.

The Court: Is there any necessity for their being re-sworn?

I think they were sworn sufficiently.

Mr. Smith: Not so far as we are concerned.

The Court: The Court will stand adjourned until tomorrow morning at 10 o'clock.

The Clerk: Court will now stand adjourned until 10 o'clock tomorrow morning.

The Court: Just a minute before we adjourn; just a minute.

I said nothing about the exhibits. The Jury will be entitled to their use.

Are they bulky or large?

Mr. Baldridge: There are three boxes of them, your Honor. We should like the Jury to have the benefit of the exhibits.

The Court: The Jury has a right to the exhibits on both sides.

Mr. Baldridge: They are here in the court room.

The Court: If you will communicate with the Clerk and [fol. 146] the Marshal, they will see that they have them. They don't have to get them immediately as they will have their dinner first.

The Court will stand adjourned until tomorrow morning at 10 o'clock.

(Whereupon, an adjournment was taken until 10 o'clock a.m. the following day, November 16, 1939.)

[fol. 147] IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

Criminal No. 1039

THE UNITED STATES OF AMERICA

vs.

GENERAL MOTORS CORPORATION, GENERAL MOTORS SALES CORPORATION, GENERAL MOTORS ACCEPTANCE CORPORATION, GENERAL MOTORS ACCEPTANCE CORPORATION OF INDIANA, INCORPORATED, E. W. BERGER, GEORGE F. BENKHART, M. E. COYLE, JAMES D. DEANE, NELSON C. DEZENDORF, AUGUST FREISE, RICHARD H. GRANT, ROY HILL, W. E. HOLLER, W. F. HUFSTADER, H. J. KLINGLER, WILLIAM S. KNUDSEN, RUSSELL LESHER, RALPH W. MOORE, W. J. MOUGEY, ARTHUR B. PURVIS, JOHN J. SCHUMANN, JR., ALFRED P. SLOAN, JR. and G. I. SMITH

RECORD OF PROCEEDINGS

BEFORE HON. WALTER C. LINDLEY, DISTRICT JUDGE

SOUTH BEND, INDIANA

November 16, 1939, Morning Session.

Page 6005 to 6023.

RAN. 8897, McCorkle, Reporter, Chicago, 7th Copy.

[fol. 148] IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

Criminal No. 1039

THE UNITED STATES OF AMERICA

vs.

GENERAL MOTORS CORPORATION, GENERAL MOTORS SALES CORPORATION, GENERAL MOTORS ACCEPTANCE CORPORATION, GENERAL MOTORS ACCEPTANCE CORPORATION OF INDIANA, INCORPORATED, Et Al.

Proceedings resumed before the Honorable Walter J.

Lindley and jury at 10:00 o'clock, a. m., on November 16, 1939.

Present:

COUNSEL HERETOFORE NOTED.

[fol. 149] The Court: Gentlemen of the jury, the Marshal advises me that there is some question you would like to ask the Court with reference to the charge and the indictment. He has handed me a note in which the foreman asked me to explain more fully Sections 34, 35, 36, 37, 38, and 72 of the indictment, and asked me to explain the statute which is involved in this case, providing that every contract, combination or conspiracy in restraint of trade, that is, in restraint of trade and commerce among the states, is illegal.

I shall attempt to give you further explanation, but perhaps you have some questions in your minds by which you may specify more fully your difficulties. If you have and will indicate to me in what respect, I shall attempt to make clear the legal questions, so far as I can.

Are there any additional questions that any of you have in mind that you would like to submit to the Court at this time?

The Foreman: Your Honor, the jury would like to know if the defendants are found not guilty, can the government appeal the case?

[fol. 150] The Court: No. They cannot.

The Foreman: If the defendants are found guilty, can they appeal the case?

The Court: Yes.

The Foreman: If in finding through this evidence that GMAC has been forced upon dealers, what should the verdict of the Jury be in that case?

The Court: Any other questions, gentlemen?

The Foreman: That is all I have. Some of the other individuals may have something.

The Court: I think I said to you yesterday that there might be three verdicts in this case and I think I gave you three forms of verdict. In one it is provided you may find the defendants all guilty and in another it is provided you may find them all not guilty; in the third it is provided you may find some of them guilty and some not guilty, and there are spaces left in the form of

the verdict in which you may place the names of those you find guilty and other spaces in which you may place the names of those you find not guilty. You may find one of the defendants guilty, and the others not guilty. You may find all but one guilty and all others not guilty. [fol. 151] In other words, the decision as to who, if anybody, and how many, who they are, that shall be found guilty, if any, lies wholly with you.

Now, I might say this to you, gentlemen, in general: I do not know anything of your difficulties, but it is desirable in every jury trial, especially this kind of a case, that the jury agree, if it can conscientiously do so.

You gentlemen are aware of the time, study, care, attention, and funds involved in a trial of this size, and a disagreement, of course, would result, of a necessity, in a retrial and a similar expenditure of effort, time and money.

Consequently, I say to you with all seriousness that you should attempt to reconcile any differences, if you have any, and that you should agree in this case, if you can say to yourselves conscientiously that you can agree. You should not use any coercion in your verdict, but you should, if possible, as reasonable men, agree and come to a unanimous decision, in order to prevent a repetition of this trial, if on all the evidence and on your conscience you can say that you can do so.

[fol. 152] Now, these paragraphs in the indictment which you mention, I think I said to you in my charge yesterday that Paragraph 34 was the charging paragraph of the indictment. That is one of the paragraphs that you asked me to discuss somewhat more at length.

You have a copy of the indictment with you, of course, you have the original indictment, and you have probably read over and over again that charging paragraph, in view of the question concerning you I conclude that you have done so. We will read it again:

“And the Grand Jurors charge that continuously for many years, up to and including the day of the finding and presentation of the indictment, at and within the Northern District of Indiana, and in the Division aforesaid, thereof, which is the Division where we are located, which is the South Bend Division.



"\* \* \* unlawfully have engaged in a conspiracy in restraint of the aforesaid trade and commerce \* \* \*"

\* Of course, that aforesaid trade and commerce refers back to the commerce in General Motors cars shipped from one state to another.

Of course, that aforesaid trade and commerce refers back to the commerce in General Motors cars shipped from one state to another.

"\* \* \* of the aforesaid trade and commerce among the several states in \* \* \*" (naming them) the different makes of General Motors automobiles.

[fol. 153] "\* \* \* and the defendants have conspired to do all acts and things and to use all means necessary and appropriate to make said restraint effective, including the means, acts, and things hereinafter more particularly alleged."

Then follows a recitation of the averments that the government relies upon which, it is said constitute the means by which the alleged conspiracy came into existence, out of which it grew and by which it was effectuated.

Now, I do not know just what you have in your minds about that section. I could not repeat to you word for word what I said yesterday, because I spoke orally, spoke extemporaneously, and with only a few notes before me; but if there is any specific question about it, gentlemen, that might enlighten me further as to your trouble in that respect, I shall attempt to clarify the issue for you. Pardon me, Mr. Foreman, did you have something further?

Mr. Foreman, do you have something further?

Foreman Geyer: It seems, Judge, your Honor, that a [fol. 154] great many difficulties arose from the fact that in Section 72, in regard to whether, if the defendants are found guilty of conspiracy and would they automatically be found guilty of this conspiracy in restraint of trade or commerce? If the evidence shows that they have coerced and conspired; would that mean that this conspiracy consisted of restraint of trade and commerce?

The Court: Paragraph 72 is largely a repetition of Paragraph 34. I take it that it is largely a summation, a summary, a concluding summary of the charge. I do not know that it was essential to the indictment at all, because the indictment is probably complete without it. But Section 72

proceeds to aver that the defendants and other persons and corporations, to the Grand Jurors unknown, throughout the three years next proceeding the finding and presentation of this indictment, at the places, and in the manner in the form aforesaid, unlawfully engaged in a conspiracy in restraint of trade and commerce among the several states in General Motors automobiles."

"Section 72 you may ignore, if you desire, and consider only Section 34, because Section 72 is really a repetition, I take it, of Section 34.

[fol. 155] It is the purpose of each of those paragraphs to have a recitation before and after a recitation of the means by which it is alleged that the alleged conspiracy came into existence or was effectuated.

As I said to you yesterday, the ultimate question for you to decide is this: Did the defendants conspire to restrain unreasonably or restrict unreasonably interstate commerce in General Motors cars? That is the ultimate question, but involved in that are the questions of fact as to whether the means that are set up in the indictment, the acts constituting the means by which the alleged conspiracy was effectuated, have been proved.

The Government's case under this indictment is grounded upon this set-up, if I may use that word: That these defendant corporations and these individual defendants who are officers, agents and representatives of the corporations, have, by concerted action, knowingly participated in and done such things as create coercion upon the dealers to bring about a certain result, the use of GMAC.

It is the theory of the Government, and a theory which has been sustained by the Court on demurrer, as [fol. 156] constituting a valid charge under the anti-trust law, that the defendants proceeded beyond acts proper in themselves and arrived at a place where their acts were not proper, acts which prevented free action by their dealers in the selection of a financing company.

I think I said to you yesterday that the defendants may expound the alleged advantages of GMAC; they may explain fully the characteristics of its operations, as they claim they exist; they may point out the advantages; they may expound all of those things; they may persuade; they may use persuasion in their conversations, in their communications with their dealers; they may even argue. Those things are all proper. They have a right, as I have said, to

determine to whom they shall sell their automobiles and to whom they shall not. Those things constitute no violation of the law.

But the charge in this indictment is that they utilized a contract which was limited to one year and might or might not be renewed and a cancellation clause in that contract upon short notice and discrimination in the shipment or non-shipment of automobiles, used them as a club upon their dealers, and thereby coerced them to use something which they, as free agents, would not have used.

[fol. 157] That is the groundwork upon which this charge is brought, and whether they did that or not is a question of fact which you alone can decide, and Government says, and the charge in this indictment is, that this coercion, this misuse, that has proceeded, according to the indictment, beyond exposition, persuasion and argument, has resulted in a situation where the commerce in General Motors cars, the products of General Motors, from state to state, has been unreasonably and unduly restricted and restrained.

I suspect that is very largely a repetition of what I said to you yesterday.

[fol. 158] I do not know whether it makes any clearer the issue in this case, whether it helps you in the solution of your problems or not. If it does, I shall be happy about it.

Paragraphs 35, 36, 37, and 38 that you asked about are the paragraphs in which the Government sets up the specific things which it contends constituted the means by which the alleged conspiracy was effectuated.

Are there any other questions, gentlemen?

The ultimate question, after all, is whether, under all the facts and circumstances, the acts of coercion mentioned in the indictment and set up in the indictment have been proved beyond all reasonable doubt.

Second, if they have been so proven, whether they have resulted to effectuate an unreasonable restraint of interstate commerce in automobiles. If it effectuated a restraint, then you have got to determine from all the facts and circumstances whether it is an unreasonable restraint.

Is there anything else, Mr. Foreman, or any other member of the Jury:

The Foreman: No.

[fol. 159] The Court: Very well. You may retire.

Mr. Ballard: If your Honor please, may we have just a moment?

The Court: Yes..

Mr. Ballard: The Defendants except to your Honor's charge that the Court held on demurrer that the Defendants have gone beyond the limits of proper action.

The Court: Well, if the Court said that, the Court was in error. What the Court meant to say was that this Court has held that the acts, the charging in the indictment, constitute a valid charge at law.

The Court has not passed upon the facts involved in this case at all. If I said something that misled the Jury in that respect, they shall bear that in mind.

Mr. Ballard: The Defendants request the Court to charge the Jury that it should not be influenced by the question of the respective rights of the parties to an appeal.

The Court: That is true, gentlemen. After all, a fair and impartial consideration of this question should not be imperiled or endangered by any consideration of what the [fol. 160] result of your verdict may be.

You are not concerned with results. You are not concerned with punishment if you should find a verdict of guilty because that is up to me. And you are not concerned with the respective rights of the parties and you shall have no part in that decision in this case.

Is there anything else, gentlemen?

Mr. Ballard: The Defendants request the Court to charge the Jury that if the Jury finds that the Defendants conspired to force GMAC on dealers but also finds that this did not restrain trade and commerce among the States in General Motors automobiles, the Jury should find the defendants not guilty.

The Court: Well, that is substantially the law. I do not like these charges that end with a conclusion you should or should not find the defendants not guilty.

But, as I have said to you heretofore, the charge is that Defendants conspired to restrain unreasonably interstate commerce in General Motors cars. That involves the preliminary question of fact as to whether coercion, as set up in the indictment or as averred in the indictment, has [fol. 161] been proved: and, if it has, it enters into your ultimate verdict. If such acts, those acts, constitute a



restraint, undue restraint of interstate commerce in General Motors automobiles, both of those things are essential before you can find the Defendants guilty.

I think that covers it. Are there any other questions?

Mr. Smith: Just for the sake of the record, if your Honor pleases, may it appear that we take an exception, which we intended to take and I think took, to your Honor's refusal to charge as requested, and will it be necessary to have those requests incorporated in the record for identification?

The Court: Yes, if you wish to insist upon that. I said yesterday when you made that request, Mr. Smith, that it was not practical to consider the respective charges that had been offered.

My feeling about the duty of a Trial Judge in the decision of a jury question, my conception of the Judge's aid to the jury, is that it can be done and such aid can be rendered more efficiently by an oral charge which de-[fol. 162] scribes, in as simple terms as possible, the legal questions involved and that I refrain, except as a last resort always, from giving to the Jury formal charges which become so involved in legal language and legal terms as to be of little aid to the Jury.

Hence my custom and my practice, from my absolute conviction that the efficiency of a Trial Judge lies largely, so far as the charge is concerned, in the method that I follow, and for that reason I followed it in this case, and I have endeavored to include in that charge everything that seemed to me proper to be considered by the Jury.

I said yesterday, and I repeat, that if there is any specific thing in the charge that has been handed to me, some 90 odd pages in length, that I have not covered, and which you deem essential, I think, in fairness to the Court, you should point it out.

Mr. Smith: On the other hand, if your Honor please, in fairness to the Defendants, is it not better that we should simply submit our requests and let your Honor do as you see fit with them, as you have done, because cer-[fol. 163] tainly we would not like to get into an argument with the Court in regard to 90 or more specific propositions of law that we think are relevant, and some of them indeed controlling, in this case, leaving it to the future.

The Court: It is my conception that it is the duty of counsel to call to my attention now anything that is deemed essential to the adequate protection of your clients, so that if I have overlooked anything I may now correct that.

I do not think you can expect a Court to go through a long series of charges such as has been tendered here and with any degree of intelligence so modify it as to make it properly applicable or pass upon it in the way of refusals or acceptances.

It seems to me wholly impracticable in a trial, and it seems to me that the only thing that the law requires from both sides in a lawsuit is a fair request to the Court as to any theory deemed essential so that the Court may advise the Jury if there has been any oversight.

I have been out of patience all of my life with the custom of written instructions to juries. I think they [fol. 164] are an abortion and have no place in a trial and I think that the modern rules which tend toward that direction instead of away from it are a gross interpretation of what a Court should do.

Now, this tendered charge may be incorporated in the record and you may have your exception, but it does not change my view that the proper method in this and every other case should be along the line that I have suggested.

Mr. Ballard: If the Court please, the Defendants request the Court to charge the Jury—

The Court: What I have said in that respect shall not affect them.

Mr. Ballard: I beg your pardon?

The Court: What I have said in that respect should not affect them.

Mr. Ballard: No.

The Court: That is true anyhow, gentlemen.

Mr. Ballard: I was not going to presume to that extent. I was going to make some oral requests.

The Defendants request the Court to charge the jury that if they find that the defendant corporations together constitute a single cooperative enterprise, in the course of which defendant corporations do not compete with one [fol. 165] another, that there is and can be no unlawful agreement among them to restrain trade and commerce among the States, in automobiles.

Mr. Baldridge: If the Court please, that is a question of law.

The Court: Well, I shall not give that instruction. It does not seem to me applicable to this case. You may have an exception.

Mr. Ballard: If the Court please, the Defendants request the Court to charge the Jury that if they find that General Motors dealers have been restrained as a result of an agreement entered into among the Defendants, effectuated by the acts alleged in the indictment, they should find the Defendants not guilty, unless they also find that the interstate trade and commerce in General Motors automobiles which moves through the retail outlet which those dealers constitute has been unduly restrained as a result thereof.

The Court: Will you read that, please, Mr. Reporter? (The record was read by the reporter.)

Mr. Smith: Has been restrained?

Mr. Ballard: Has been restrained.

Mr. Smith: Unduly.

[fols. 166-167] Mr. Ballard: Has been unduly restrained as a result thereof.

The Court: Well, I think I covered that in my charge to the Jury. I think I have said that previously.

Anything else, gentlemen?

Mr. Ballard: That is all, your Honor.

Mr. Smith: No, your Honor.

The Court: You may retire with the officers again.

(Thereupon, the jury retired to the jury room in custody of two Deputy Marshals.

Whereupon, further proceedings were had before the Court, out of the presence and hearing of the jury, viz:

The Court: I should like both reporters to submit me a transcript of what I said last night and what I said this morning. There can, of course, be no change in the substance of what I have said, but there may be some corrections in grammar and construction of sentences.

If there is nothing further, gentlemen, the Court will be in recess.

(Whereupon, the Court recessed pending verdict of the Jury.)

[fol. 168] IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDMENT OF MOTION TO SUSPEND AND MODIFY PROVISIONS  
OF CONSENT DECREE—Filed June 5, 1946

Respondent, Ford Motor Company, a Delaware corporation, by its attorneys, Clifford B. Longley and Wallace R. Middleton, hereby amends its motion to suspend and modify provisions of consent decree by submitting in support of such motion the attached affidavits.

Clifford B. Longley (sgd) Clifford B. Longley.  
Wallace R. Middleton (sgd) Wallace R. Middle-  
ton, 1400 Buhl Building, Detroit, Michigan, At-  
torneys for Respondent, Ford Motor Company.

[fol. 169] IN UNITED STATES DISTRICT COURT

[Title omitted]

## AFFIDAVIT IN SUPPORT OF MOTION

STATE OF MICHIGAN,  
County of Wayne, ss.

J. R. Davis, being duly sworn, deposes and says that he is Vice President of Ford Motor Company, one of the respondents in the above entitled cause; that he has read the motion of the Ford Motor Company heretofore filed in this cause for relief from the provisions of the consent decree entered herein and the amendment thereto to which this affidavit is attached and that the statements of fact therein contained are true to the best of his information and belief.

Deponent further says that he and the other officers and directors of Ford Motor Company are concerned over the statistical data shown in the chart attached to the affidavit of C. K. Warren which is made a part of said motion revealing that the percentage of cars sold by Ford Motor Company with respect to all cars sold by all automobile manufacturers has been decreasing; that it is considered by them necessary to take every reasonable step to try to reverse this trend; and that they desire to take certain



steps for this purpose which they are now prohibited from taking by the provisions of said consent decree.

[fol. 170] Deponent further says that in order to increase the sale of its cars it is necessary among other things (1) to increase and strengthen its dealer outlets; (2) to reduce the delivered price to its retail customers and (3) to grant more favorable and lenient financing terms to meet competition; that as a result of the Ford Motor Company not being able to own and control a finance company and not being able to induce its dealers to patronize such finance company or some other finance company whose rates and practices would be as helpful in the sale of Ford products as Ford's own finance company, the Ford Motor Company is in the position of having to refrain from comment on dealer relationships with finance companies which are inimical to the interests of the Ford Motor Company and to refrain from taking any action which would tend to require finance companies doing business with its dealers to adopt rates and practices which are conducive to the sale of Ford products: that General Motors Corporation since it is free of these restraints and since it owns and controls a finance company is able to benefit itself and has benefited itself materially by doing the things which Ford has wanted to do but is prevented from doing.

Deponent further says that the Company has been and will be handicapped in increasing and strengthening its dealer outlets because the dealers most able to sell cars in quantity are those who are young and energetic but do not necessarily have the capital required to finance an active dealership, because it happens in many cases that the men with capital are older men without a future to establish who are more conservative and less willing to take risks and that they, whether in a dealership by themselves or in partnership with the younger men, exercise a restraining influence on the dealership and because the young and energetic dealers, whether they obtain their financing from private individuals or from finance companies or banks, are controlled from the point of view of the safety of the investment rather than from a primary desire to sell cars and trucks in volume even though there may be more or less financial risk involved; that your deponent is informed and believes that General Motors Holding Corporation has invested large amounts of cap-

ital in dealerships throughout the country and that your [fol. 171] deponent is informed and believes that General Motors Holding Corporation has invested in these cases far more money in ratio to the amount put up by the dealer than is the general practice of finance companies or banks; that while the decree does not prohibit Ford Motor Company from making capital loans to its dealers where no part of the proceeds of the loan are used to finance the wholesale purchase of cars, it does prohibit the Ford Motor Company from acquiring an affiliate for the purpose of financing the wholesale purchase of cars by dealers and from owning, acquiring, controlling, or closely affiliating with a finance company for the purpose of providing more favorable and lenient financing plans to meet competition, and for the purpose of operating in conjunction with a corporation that might be set up by the Ford Motor Company to provide working capital for new dealers, present dealers, or long-established dealers who may be in need of additional finances to more effectively merchandise additional cars, trucks, and parts; that capital loans by a holding corporation set up for that purpose by the Ford Motor Company would be futile in an effort to merchandise a greater number of cars and trucks unless during the so-called peak selling season the dealer would be able to obtain very liberal wholesale financing terms on his used car stock; that during normal periods of merchandising automobiles and trucks the percentage of new cars or trucks sold without a used car or truck being accepted in trade is relatively small, about 20 percent of the dealer's total sales; that Ford Motor Company and its dealers are further handicapped in not owning, acquiring, controlling or closely affiliating with a finance company because there are many occasions when large fleet sales of cars or trucks could be made provided special financing arrangements were available and such special or liberal financing terms could be made available if the Ford Motor Company owned or controlled a financing company; that because of these situations a so-called motor holding corporation and a financing company are inextricably tied together and that one cannot effectively [fol. 171A] from a merchandising standpoint be undertaken without some control over the other; that General Motors Corporation through its control of both General Motors Holding Corporation and General Motors Accept-

ance Corporation is in a position to fit these two programs together into an integrated whole and that this has enabled General Motors to maintain a large aggressive, adequately capitalized and financed dealer organization; that this deponent has been informed of many instances in which General Motors Holding Corporation through this arrangement has been able to finance dealerships which as a result have been able to enjoy much greater sales activity than the Ford Motor Company has been able to obtain from its dealers in such area.

(sgd) J. R. Davis

Subscribed and sworn to before me this 31st day of May, A.D., 1946 (sgd) Ethel A. Nelson, Notary Public, Wayne County, Michigan, My commission expires: June 3, 1947.

[fol. 172] IN UNITED STATES DISTRICT COURT

(Title omitted.)

AFFIDAVIT IN SUPPORT OF MOTION

DISTRICT OF COLUMBIA, ss.

H. M. CUNNINGHAM, being duly sworn, deposes and says that he is the Manager of the Washington branch of the Ford Motor Company and has been the Manager of that branch during all the time referred to below; that during the years, 1940 and 1941, his branch was able to obtain only a very small percentage of the taxi cab business in Washington; that during the year, 1940, the Ford dealers in Washington sold only 42 taxi cabs while, according to registration certificates, Chevrolet dealers sold 617 taxi cabs; that he has been advised by the representative of the Steuart Motor Company, a Ford dealer in Washington, that this difference in taxi cab sales was due to a selling arrangement between General Motors dealers and taxi cab operators and taxi cab companies which the Ford dealer could not meet; that, according to this advice, Premier Cab Association in 1939 purchased from Lustine-Nicholson Motor Company, a Chevrolet dealer, approximately 100 taxi cabs which were financed through General Motors Acceptance Corporation with no down payment upon dealer's endorsement only; that the titles in these

instances were in the names of the individual cab drivers; [fol. 173] that according to this advice, in 1940 another deal was worked out with the same Chevrolet dealer involving approximately 200 taxi cabs, financed through General Motors Acceptance Corporation, pursuant to which the units were turned over to the cab drivers with no down payment but with the taxi cab association guaranteeing payment of the notes and retaining title to the cars until the same were paid for; that this deponent was informed that in 1941 the Senator Cab Company purchased a number of cabs from Ourisman Motor Company, a Chevrolet dealer, with General Motors Acceptance Corporation financing which involved no down payment; that the titles issued to cover these units showed that a lien of \$1,074.00 was involved which amount represented the cost of the car; and that deponent is informed that a \$75.00 refund was made to the drivers after six months provided all notes had been paid up to that time; that Ford dealers were unable to obtain similar financing arrangements from any finance company and were therefore unable to compete in the sale of these cabs.

Deponent further says that in the sale of Ford transit buses there has been reported to him similar difficulty in meeting finance terms of competitors which have run for a period of from four to seven years; that Ourisman Motor Company through an arrangement with General Motors Acceptance Corporation is reported to have sold in 1941 forty-seven hundred units in Washington, D. C. which arrangement is understood to have been without recourse and involving down payments which averaged only \$150.00 including the cost of license tags, title, etc. and ran for periods of 24, 30 and 36 months. Deponent further says that neither he nor anyone in his organization has been able to do anything about transactions of this sort since he has been advised that he cannot make arrangements with finance companies for the purpose of visiting dealers to enable the dealer to compete with transactions of this sort; and that he is advised that the Ford dealers in his territory were by themselves unable to obtain financing arrangements from existing companies which would enable them to compete in such transactions.

[fol. 174] Further deponent saith not.

(sgd) H. M. Cunningham



FINANCE COST COMPARISON CHART - DISTRICT TERRITORY  
TRUCK CHART  
LESS THAN 50% DOWN PAYMENT  
LONG DISTANCE HAULING

	Genco		Universal Credit		Associates Disc.		Commercial Credit	
	<u>12 Mo.</u>	<u>15 Mo.</u>	<u>12 Mo.</u>	<u>15 Mo.</u>	<u>12 Mo.</u>	<u>15 Mo.</u>	<u>12 Mo.</u>	<u>15 Mo.</u>
Retail Selling Price	1,450.00	1,450.00	1,450.00	1,450.00	1,450.00	1,450.00	1,450.00	1,450.00
Insurance	164.85	243.18	234.50	348.31	242.53	359.36	240.69	361.04
Basic Trade Price	1,614.85	1,693.18	1,684.50	1,798.31	1,692.53	1,809.36	1,690.69	1,811.04
Down Payment	614.85	693.18	684.50	798.31	692.53	809.36	690.69	811.04
Balance to Finance	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00
Interest	50.00	62.45	50.00	62.45	60.20	74.75	70.04	87.50
Amount of Contract	1,050.00	1,062.45	1,050.00	1,062.45	1,060.20	1,074.75	1,070.04	1,087.50
Payments	87.50	70.83	87.50	70.83	88.35	71.65	89.17	72.50
Basic Cost of Financing (Interest and Insurance)	214.85	305.63	284.50	410.76	302.73	434.11	310.73	448.54
Dealer Reserve	18.00	20.49	15.40	20.90	18.00	21.00	18.00	23.00

8.00 / 20% of \$50.00

8.00 / 20% of \$62.45

1% of \$1,000.00 / 3.00 =  
13.00  
Bonus 500 Deal 2.40

1 1/2% of 1,000.00 / 3.50 =  
18.50  
Bonus 500 Deal 2.40

1 1/2% of 1,000.00 / 3.00

2-3/4% of 1,000.00 / \$3.50

1/2% of 1,000.00 / 5.00 =  
13.00  
Bonus 500 Deal 5.00

1% of 1,000.00 / 8.00 =  
18.00  
Bonus 500 Deal 5.00

FINANCE COST COMPARISON CHART - DETROIT TERRITORY  
PASSENGER CAR  
LESS THAN 50% DOWN PAYMENT - WITH INSURANCE

	12 Mo.	15 Mo.	12 Mo.	15 Mo.	12 Mo.	15 Mo.	Commercial
Retail Selling Price	1,100.00	1,100.00	1,100.00	1,100.00	1,100.00	1,100.00	1,100.00
Insurance	(12 Mo) 24.00	(13-18) 35.50 (Red →)	57.50	83.75	(12 Mo) 52.00	57.50	49.50
Price	1,124.00	1,135.50 (Red →)	1,152.00	1,183.75	1,152.00	1,181.00	1,144.00
Down Payment	404.00	415.50 (Red →)	432.00	463.75	432.00	461.00	429.50
Balance to Finance	720.00	720.00	720.00	720.00	720.00	720.00	720.00
Interest	(5%) 36.00	45.00	(5%) 36.00	45.00	(5%) 36.00	45.00	(**6%) 43.20
Amount of Contract	756.00	765.00	756.00	765.00	756.00	765.00	763.20
Payments	63.00	51.00	63.00	51.00	63.00	51.00	63.60
Basic Cost of Financing (Interest & Insurance)	60.00	80.50 (Red →)	93.50	128.75	93.50	126.00	92.70
For Reserve	15.20	17.00	12.60	16.70	13.80	16.10	16.60
	8.00 / 20% of \$36.00	8.00 / 20% of \$45.00	15 of \$720.00 / 3.00 = 10.20 Bonus (500 Deal) 2.40	1 1/2% of \$720.00 / 3.50 = 14.50 Bonus 500 Deal 2.40	1 1/2% of \$720.00 / 3.00 = 11.60 Bonus 500 Deal 5.00	1-3/4% of \$720.00 / 3.00 = 83.50	1/2% of \$720.00 / 8.00 = 11.60 Bonus 500 Deal 5.00

\* Gmas uses 4% Chart where down payment is 50% or more of balance to Finance.  
 \*\* Commercial Credit uses 6% (5% chart plus 1% added to cover personal insurance coverage).  
 Black figures show deal worked out on Rate Charts in effect March 1, 1946.  
 Red figures show changes resulting from revision of Rate Charts May 1, 1946.  
 NOTE: Gmas has not revised Rate Charts pending settlement with UPA Retail Selling Price.

FINANCE COST COMPARISON CHART - DETROIT TERRITORY  
PASSENGER CAR  
LESS THAN 50% DOWN PAYMENT - WITH INSURANCE

	12 Mo.	15 Mo.	12 Mo.	15 Mo.	12 Mo.	15 Mo.	Commercial
Retail Selling Price	1,100.00	1,100.00	1,100.00	1,100.00	1,100.00	1,100.00	1,100.00
Insurance	(12 Mo) 24.00	(13-18) 35.50 (Red →)	57.50	83.75	(12 Mo) 52.00	57.50	49.50
Price	1,124.00	1,135.50 (Red →)	1,152.00	1,183.75	1,152.00	1,181.00	1,144.00
Down Payment	404.00	415.50 (Red →)	432.00	463.75	432.00	461.00	429.50
Balance to Finance	720.00	720.00	720.00	720.00	720.00	720.00	720.00
Interest	(5%) 36.00	45.00	(5%) 36.00	45.00	(5%) 36.00	45.00	(**6%) 43.20
Amount of Contract	756.00	765.00	756.00	765.00	756.00	765.00	763.20
Payments	63.00	51.00	63.00	51.00	63.00	51.00	63.60
Basic Cost of Financing (Interest & Insurance)	60.00	80.50 (Red →)	93.50	128.75	93.50	126.00	92.70
For Reserve	15.20	17.00	12.60	16.70	13.80	16.10	16.60
	8.00 / 20% of \$36.00	8.00 / 20% of \$45.00	15 of \$720.00 / 3.00 = 10.20 Bonus (500 Deal) 2.40	1 1/2% of \$720.00 / 3.50 = 14.50 Bonus 500 Deal 2.40	1 1/2% of \$720.00 / 3.00 = 11.60 Bonus 500 Deal 5.00	1-3/4% of \$720.00 / 3.00 = 83.50	1/2% of \$720.00 / 8.00 = 11.60 Bonus 500 Deal 5.00

\* see 4% Chart where down payment is 50% or more of balance to Finance.  
 \*\* Commercial Credit uses 6% (5% chart plus 1% added to cover personal insurance coverage).  
 Black figures show deal worked out on Rate Charts in effect March 1, 1946.  
 Red figures show changes resulting from revision of Rate Charts May 1, 1946.  
 NOTE: Gmas has not revised Rate Charts pending settlement with UPA Retail Selling Price.



Subscribed and sworn to before me this 24th day of May, A. D., 1946 (sgd) Norma E. Beckett, Notary Public, District of Columbia. My commission expires: 6/30/47.

[fol. 175] IN UNITED STATES DISTRICT COURT

[Title omitted.]

AFFIDAVIT IN SUPPORT OF MOTION

STATE OF MICHIGAN,

County of Wayne, ss.

W. EARL WESTEN, being duly sworn, deposes and says that he is employed by the Ford Motor Company, respondent in the above entitled cause, as Chief Statistician of the Business Management Division of the General Sales Department; that he compiled the attached figures showing the comparative operation of financing plans of various finance companies with respect to the sales of new cars and trucks; that such figures were computed from charts supplied to him by the finance companies mentioned and from information supplied to him by various dealers; that the figures taken from such charts are accurately copied; and that the computations are correctly made.

Further deponent saith not.

W. Earl Westen

Subscribed and sworn to before me this 29th day of May, 1946. Archie Walter Brown, Notary Public, Wayne County, Michigan. My Commission Expires August 28, 1949. (Seal)

(Here follows 2 Photolithographs, side folios 176-177)

[fol. 178] IN UNITED STATES DISTRICT COURT

[Title omitted.]

AFFIDAVIT IN SUPPORT OF MOTION

STATE OF MICHIGAN,

County of Wayne, ss.

CHARLES K. WARREN, being duly sworn, deposes and says that he is the chief analyst for the Market Research Division of the Ford Motor Company and that the attached chart showing comparative sales of Ford products and the

products of other automobile manufacturing companies was prepared by him from the regular yearly reports compiled by the Motor Statistical Department of R. L. Polk and Company, Detroit, Michigan, designated as Polk National New Car Sales Service, Service E; that he is informed and believes that the figures contained in such report are prepared from registration data obtained from the respective departments of registration of the various states of the United States and are authentic and that the figures copied by him from such report are accurately copied.

Further deponent saith not.

Charles K. Warren

Subscribed and sworn to before me this 29th day of May, 1946. Archie Walter Brown, Notary Public, Wayne County, Michigan. My Commission Expires August 28, 1949. (Seal)

(Here follows 2 Photolithographs, side folios 179-180)

[fol. 181] IN UNITED STATES DISTRICT COURT

[Title omitted.]

PROOF OF MAILING

STATE OF MICHIGAN,  
County of Wayne, ss.

BETTY HOLLAND, of the City of Detroit, in said county, being duly sworn, deposes and says that on the 31st day of May, A.D., 1946, she served a true copy of the Amendment of Motion to Suspend and Modify Provisions of Consent Decree together with Affidavits in Support Thereof, the original of which are attached hereto, upon Alexander N. Campbell, United States Attorney for the Northern District of Indiana; Wendell Berge, Assistant Attorney General, Department of Justice; Scheer, Scheer & Taylor; Samuel S. Isseks and Alphonse A. Laporte, Attorneys for Respondents, Commercial Investment Trust Corporation, et al., by depositing the same in the United States mail in the City of Detroit in sealed envelopes, which envelopes were addressed as follows:



# PASSENGER CAR REGISTRATIONS

## By Corporations

1932

General Motors	41.5
Ford	23.9
Chrysler	17.4
All Others	17.2

1933

General Motors	43.3
Chrysler	25.8
Ford	21.0
All Others	9.9

1935

General Motors	38.4
Ford	30.2
Chrysler	22.9
All Others	8.5

1934

General Motors	39.8
Ford	28.2
Chrysler	22.9
All Others	9.1

1936

General Motors	43.1
Chrysler	25.0
Ford	22.4
All Others	9.5

1938

General Motors	44.8
Chrysler	25.0
Ford	20.5
All Others	9.7

1937

General Motors	40.6
Chrysler	25.4
Ford	22.7
All Others	11.3

1939

General Motors	43.7
Chrysler	24.2
Ford	21.4
All Others	10.7

1941

General Motors	47.3
Chrysler	24.2
Ford	18.8
All Others	9.7

1940

General Motors	47.6
Chrysler	23.7
Ford	18.9
All Others	9.8

**NEW PASSENGER CAR REGISTRATIONS**

1932 thru 1941

(p. 1248)

MAKE	1932	1933	1934	1935	1936	1937	1938	1939	1940	1941	10 Year Total	Yearly Average
1. CHEVROLET	322,860	487,493	534,906	656,698	930,250	768,040	464,337	598,341	853,529	880,346	6,483,800	648,380
2. FORD	258,927	311,113	536,528	826,519	748,554	765,933	363,688	481,496	542,755	602,013	5,431,526	543,153
3. PLYMOUTH	111,926	249,667	302,557	382,985	499,580	462,268	286,243	348,807	440,093	452,187	3,536,311	353,631
4. BUICK	49,708	43,809	63,067	87,635	160,687	205,297	166,380	218,995	295,513	308,615	1,599,706	159,970
5. DODGE	28,111	86,062	90,139	178,770	248,518	255,258	104,881	176,585	197,252	215,563	1,581,139	158,114
6. PONTIAC	47,926	85,348	72,645	140,122	171,669	212,403	98,399	159,836	235,815	286,123	1,510,286	151,029
7. OLDSMOBILE	24,128	35,295	71,676	149,375	178,488	188,306	92,398	146,412	201,256	230,367	1,317,701	131,770
8. MERCURY *								65,884	80,418	81,874	228,176	76,059
9. HUDSON	37,419	38,777	59,817	75,425	99,296	90,043	40,889	62,855	79,979	73,261	657,761	65,776
10. STUDEBAKER	41,968	36,242	41,560	39,573	67,835	70,048	41,504	84,660	102,281	114,331	640,002	64,000
11. CHRYSLER	26,016	28,677	28,052	40,536	58,698	91,622	46,184	63,956	100,117	143,025	626,883	62,688
12. PACKARD	11,058	9,081	6,552	37,653	68,772	95,455	49,163	62,005	73,794	69,653	483,186	48,319
13. DESOTO	25,311	21,260	11,447	26,952	45,088	74,424	35,259	51,951	71,943	91,004	454,639	45,464
14. NASH	20,233	11,353	23,616	35,184	43,070	70,571	31,814	54,050	52,853	77,824	420,568	42,057
15. CADILLAC	10,117	7,612	10,081	18,467	25,758	40,140	26,371	35,287	38,564	60,242	272,639	27,264
16. WILLYS	25,898	15,667	6,576	10,439	12,423	51,411	13,012	14,734	21,418	22,102	193,680	19,368
17. LINCOLN	3,179	2,112	2,061	2,370	15,567	25,243	16,991	19,940	21,004	18,769	127,236	12,724
18. MISC.	51,614	37,226	33,277	35,205	30,244	17,290	6,675	7,583	7,321	3,867	230,302	23,030
U.S. TOTAL	1,096,399	1,493,794	1,888,557	2,743,908	3,404,497	3,483,752	1,891,021	2,653,377	3,415,905	3,731,166	25,795,541	2,579,554

\* 3 Years Only

Alexander N. Campbell  
United States Attorney for  
the Northern District of  
Indiana

Wendell Berge  
Assistant Attorney General  
Department of Justice  
Washington, D. C.

South Bend, Indiana  
Scheer, Scheer & Taylor  
408 Oddfellows Building  
South Bend, Indiana

Mr. Alphonse A. Laporte  
One Park Avenue  
New York, New York

Mr. Samuel S. Isseks  
30 Broad Street  
New York, New York

[fol. 182] upon which envelopes the United States postage was fully prepaid.

Betty Holland (sgd.) , Betty Holland

Subscribed and sworn to before me this 4th day of June, A.D., 1946. Anna P. Widrig, Notary Public, Wayne County, Michigan. My commission expires: Sept. 9, 1946.

[fol. 183] And afterwards, to wit, on the 22nd day of June, 1946, the following further proceedings were had in the above entitled cause, to wit:

Comes now respondent, Ford Motor Company, and files an order on motion of Government for extension of Bar against affiliation, and on motion of respondents to modify and suspend consent decree, containing proposed findings of Fact and conclusions of Law, together with proof of service of same, which Order and proof of service read in the words and figures following, to wit:

[fol. 184] IN UNITED STATES DISTRICT COURT

[Title omitted.]

[File endorsement omitted.]

ORDER ON MOTION OF GOVERNMENT FOR EXTENSION OF BAR AGAINST AFFILIATION AND ON MOTION OF RESPONDENTS TO MODIFY AND SUSPEND CONSENT DECREE—Filed June 22, 1946. At a session of said Court, held in the Court House in the City of Hammond, State of Indiana, on the — day of —, A. D., 1946.

Present: Hon. Patrick T. Stone, District Judge.

The United States has moved that this Court extend the period provided in paragraph 12 of the consent decree



entered in this cause on November 15, 1938 beyond January 1, 1946, the date to which it was previously extended by consent of the parties, and respondent Ford Motor Company has opposed this motion and in turn moved that this Court enter an order pursuant to paragraph 12 that nothing in said consent decree shall preclude said respondent from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with said respondent's dealers in the manner provided in said decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a thereof. In addition, Respondent Ford Motor Company has moved pursuant to paragraph 12a of said decree that the provisions of subparagraphs (i) and (k) of paragraph 6 of said decree be suspended until similar provisions are imposed upon General Motors Corporation and that subparagraph (e) of said paragraph 6 be modified to the extent necessary to permit said respondent to do those things prohibited by said subparagraph (i) and (k) which might also be prohibited by said subparagraph (e), such modification [fol. 185] to continue until provisions similar to said subparagraph (e) without such modification are imposed on General Motors Corporation. Also, all respondent Finance companies have moved for suspension of subparagraph (d) of paragraph 7 of said decree until a similar provision is imposed upon General Motors Acceptance Corporation.

All of said motions have been heard upon affidavits and arguments of counsel in open court, and the Court finds:

(1) That the purpose of the second unnumbered paragraph of paragraph 12 of said decree was not only to protect Respondent, Ford Motor Company, from the competitive disadvantage that might result from the continued ownership of General Motors Acceptance Corporation by General Motors Corporation if the civil suit of The United States against General Motors Corporation to require it to divest itself of General Motors Acceptance Corporation was delayed, but also to give Respondent, Ford Motor Company, an opportunity to defend itself on the question of affiliation after the time limit set forth in such paragraph had expired.



(2) That the time limit set forth in such paragraph has expired and Respondent, Ford Motor Company should be free to acquire and operate a finance company if it desires to do so.

(3) That the suit instituted by the United States against General Motors Corporation to require that corporation to divest itself of ownership of General Motors Acceptance Corporation is still pending and has not been reached for trial, and that this amounts to undue delay;

(4) That Respondent, Ford Motor Company, is being placed at a competitive disadvantage by the further continuance of the bar against affiliation contained in the consent decree in this cause while General Motors Corporation still retains ownership and control of General Motors Acceptance Corporation;

[fol. 186] (5) That Respondent, Ford Motor Company, should be free of said bar against affiliation so that it may proceed by such means as are available to it within the framework of said decree as modified hereby to overcome such competitive disadvantage;

(6) That none of the agreements, acts or practices enjoined in subparagraphs (i) and (k) of paragraph 6 of said decree and in subparagraph (d) of paragraph 7 of said decree and performed by General Motors Corporation was held by the trial court in its instructions to the jury (in the criminal proceeding instituted against General Motors Corporation by the filing of an indictment by the Grand Jury on May 27, 1938, No. 1039) to constitute a proper basis for the return of a general verdict of guilty;

(7) That none of the restraints and requirements contained in said subparagraphs have been imposed in substantially identical terms upon General Motors Corporation and its subsidiaries or General Motors Acceptance Corporation and its subsidiaries either (w) by consent decree, or (x) by final decree of a court of competent jurisdiction not subject to further review, or (y) by decree of such court which, although subject to further review, continues effective, or (z) by the equivalent of such a decree as defined in clause (2) of subparagraph 12(a) of said decree;

(8) That respondents are at a competitive disadvantage because General Motors Corporation and General Motors Acceptance Corporation are still free to do the things that respondents are enjoined by said subparagraph from doing.

Therefore, it is ordered, adjudged and decreed as follows:

1. The motion of the United States for further extension of the bar against affiliation be and the same hereby is denied.

2. Nothing in said consent decree shall preclude respondent, Ford Motor Company, from acquiring and re-[fol. 187] taining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with said respondent's dealers in the manner provided in said decree as modified herein or by any other order of modification or suspension of said decree that may be entered pursuant to paragraph 12(a) thereof.

3. Each of the restraints and requirements, contained in subparagraphs (i) and (k) of paragraph 6 of said decree be and the same hereby is suspended until it shall be imposed, in substantially identical terms, upon General Motors Corporation and its subsidiaries, and the restraints contained in subparagraph (d) of paragraph 7 of said decree be and they hereby are suspended until they shall be imposed upon General Motors Acceptance Corporation and its subsidiaries, either (x) by consent decree, or (y) by final decree of a court of competent jurisdiction not subject to further review or (z) by decree of such court which, although subject to further review, continues effective.

4. Each of the requirements and restraints contained in subparagraph (e) of paragraph 6 of said decree be and the same hereby are modified to such an extent that respondent, Ford Motor Company, shall not be required to do anything or be restrained from doing anything pursuant to said subparagraph, which prior to the entry of this order and decree it might have been required to do or restrained from doing by subparagraphs (i) and (k) of said paragraph, such modification to continue, however,

only until the provisions of said subparagraph (e) without such modifications are imposed in substantially identical terms upon General Motors Corporation and its subsidiaries, either (x) by consent decree, or (y) by final decree of a court of competent jurisdiction not subject to further review or (z) by decree of such court which, although subject to further review, continues effective.

— — —, District Judge.

[fol. 188] IN UNITED STATES DISTRICT COURT

[Title omitted]

(Filed endorsement omitted)

PROOF OF SERVICE OF PROPOSED ORDER ON MOTION OF GOVERNMENT FOR EXTENSION OF BAR AGAINST AFFILIATION AND ON MOTION OF RESPONDENTS TO MODIFY AND SUSPEND CONSENT DECREE, TOGETHER WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW CONTAINED THEREIN AND NOTICE OF SUBMISSION THEREOF FOR SIGNATURE—Filed July 3, 1946

STATE OF MICHIGAN,  
County of Wayne, ss.

BERNADETTE LABELLE, of the City of Detroit, in said County, being duly sworn, deposes and says that on the 24th day of June, A.D., 1946, she served a copy of the Proposed Order on Motion of Government for Extension of Bar Against Affiliation and On Motion of Respondents to Modify and Suspend Consent Decree, together with findings of fact and conclusions of law contained therein and Notice of Submission thereof for Signature, a copy of each of which is hereto attached, upon Alexander N. Campbell, United States Attorney for the Northern District of Indiana; Wendell Berge, Assistant Attorney General, Department of Justice; Scheer, Scheer & Taylor; Samuel S. Isseks and Alphonse A. Laporte, Attorneys for Respondents, Commercial Investment Trust Corporation, et al., by depositing the same in the United States mail in the City of Detroit in sealed envelopes, which envelopes were addressed as follows:

Alexander N. Campbell . . . Wendell Berge  
 United States Attorney for Assistant Attorney General  
 the Northern District of Department of Justice  
 Indiana Washington, D. C.

South Bend, Indiana

[fol. 189]

Scheer, Scheer & Taylor . . . Mr. Samuel S. Isseks  
 408 Oddfellows Building 30 Broad Street  
 South Bend, Indiana New York, New York

Mr. Alphonse A. Laporte  
 One Park Avenue  
 New York, New York

upon which envelopes the United States postage was fully  
 prepaid.

Bernadette LaBelle

Subscribed and sworn to before me this 25th day of  
 June, A.D., 1946, Estelle C. Pylar, Notary Public, Wayne  
 County, Michigan. My commission expires June 21, 1949.

[fol. 190] IN UNITED STATES DISTRICT COURT

(Title omitted.)

NOTICE OF SUBMISSION OF PROPOSED ORDER.

To: Alexander N. Campbell, United States Attorney  
 for the Northern District of Indiana, South Bend, Indiana;  
 Wendell Berge, Assistant Attorney General, Department  
 of Justice, Washington, D. C.

To: Scheer, Scheer & Taylor, 408 Oddfellows Building,  
 South Bend, Indiana; Samuel S. Isseks, 30 Broad Street,  
 New York, New York; Alphonse A. Laporte, One Park  
 Avenue, New York, New York, Attorneys for Respondents  
 Commercial Investment Trust Corporation, et al.

Please take notice that the proposed order, with find-  
 ings of fact and conclusions of law contained therein, a  
 copy of which is hereto attached has been submitted by  
 respondent Ford Motor Company to the Clerk of the



[fol. 191] Court for signature by Honorable Patrick T. Stone, United States District Judge.

Dated: June 24, 1946.

\_\_\_\_\_, Clifford B. Longley, \_\_\_\_\_, Wallace R. Middleton, \_\_\_\_\_, Frederick C. Nash, 1400 Buhl Building, Detroit, Michigan, Attorneys for Respondent, Ford Motor Company.

[fol. 192] IN UNITED STATES DISTRICT COURT

(Title omitted.)

ORDER ON MOTION OF GOVERNMENT FOR EXTENSION OF BAR AGAINST AFFILIATION AND ON MOTION OF RESPONDENTS TO MODIFY AND SUSPEND CONSENT DECREE.

At a session of said Court, held in the Court House in the City of Hammond, State of Indiana, on the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 1946.

Present: Hon. Patrick T. Stone, District Judge.

The United States has moved that this Court extend the period provided in paragraph 12 of the consent decree entered in this cause on November 15, 1938 beyond January 1, 1946, the date to which it was previously extended by consent of the parties, and respondent Ford Motor Company has opposed this motion and in turn moved that this Court enter an order pursuant to paragraph 12 that nothing in said consent decree shall preclude said respondent from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with said respondent's dealers in the manner provided in said decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a thereof. In addition, Respondent Ford Motor Company has moved pursuant to paragraph 12a of said decree that the provisions of subparagraphs (i) and (k) of paragraph 6 of said decree be suspended until similar provisions are imposed upon General Motors Corporation and that subparagraph (e) of said paragraph 6 be modified to the extent necessary to permit said respondent to do those things prohibited by

said subparagraph (i) and (k) which might also be prohibited by said subparagraph (j), such modification to [fol. 193] continue until provisions similar to said subparagraph (e) without such modification are imposed on General Motors Corporation. Also, all respondent Finance companies have moved for suspension of subparagraph (d) of paragraph 7 of said decree until a similar provision is imposed upon General Motors Acceptance Corporation.

All of said motions have been heard upon affidavits and arguments of counsel in open court, and the Court finds:

(1) That the purpose of the second unnumbered paragraph of paragraph 12 of said decree was not only to protect Respondent, Ford Motor Company, from the competitive disadvantage that might result from the continued ownership of General Motors Acceptance Corporation by General Motors Corporation if the civil suit of The United States against General Motors Corporation to require it to divest itself of General Motors Acceptance Corporation was delayed, but also to give Respondent, Ford Motor Company, an opportunity to defend itself on the question of affiliation after the time limit set forth in such paragraph had expired.

(2) That the time limit set forth in such paragraph has expired and Respondent, Ford Motor Company should be free to acquire and operate a finance company if it desires to do so.

(3) That the suit instituted by the United States against General Motors Corporation to require that corporation to divest itself of ownership of General Motors Acceptance Corporation is still pending and has not been reached for trial, and that this amounts to undue delay;

(4) That Respondent, Ford Motor Company, is being placed at a competitive disadvantage by the further continuance of the bar against affiliation contained in the consent decree in this cause while General Motors Corporation still retains ownership and control of General Motors Acceptance Corporation;

[fol. 194] (5) That Respondent, Ford Motor Company, should be free of said bar against affiliation so that it may

proceed by such means as are available to it within the framework of said decree as modified hereby to overcome such competitive disadvantage:

(6) That none of the agreements, acts or practices enjoined in subparagraphs (i) and (k) of paragraph 6 of said decree and in subparagraph (d) of paragraph 7 of said decree and performed by General Motors Corporation was held by the trial court in its instructions to the jury (in the criminal proceeding instituted against General Motors Corporation by the filing of an indictment by the Grand Jury on May 27, 1938, No. 1039) to constitute a proper basis for the return of a general verdict of guilty;

(7) That none of the restraints and requirements contained in said subparagraphs have been imposed in substantially identical terms upon General Motors Corporation and its subsidiaries or General Motors Acceptance Corporation and its subsidiaries either (w) by consent decree, or (x) by final decree of a court of competent jurisdiction not subject to further review, or (y) by decree of such court which, although subject to further review, continues effective, or (z) by the equivalent of such a decree as defined in clause (2) of subparagraph 12(a) of said decree;

(8) That respondents are at a competitive disadvantage because General Motors Corporation and General Motors Acceptance Corporation are still free to do the things that respondents are enjoined by said subparagraph from doing.

Therefore, it is ordered, adjudged and decreed as follows:

1. The motion of the United States for further extension of the bar against affiliation be and the same hereby is denied.

2. Nothing in said consent decree shall preclude respondent, Ford Motor Company, from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with said respondent's dealers in the manner provided in said decree as modified herein

or by any other order of modification or suspension of said decree that may be entered pursuant to paragraph 12(a) thereof.

3. Each of the restraints and requirements contained in subparagraphs (i) and (k) of paragraph 6 of said decree be and the same hereby is suspended until it shall be imposed, in substantially identical terms, upon General Motors Corporation and its subsidiaries, and the restraints contained in subparagraph (d) of paragraph 7 of said decree be and they hereby are suspended until they shall be imposed upon General Motors Acceptance Corporation and its subsidiaries, either (x) by consent decree, or (y) by final decree of a court of competent jurisdiction not subject to further review or (z) by decree of such court which, although subject to further review, continues effective.

4. Each of the requirements and restraints contained in subparagraph (e) of paragraph 6 of said decree be and the same hereby are modified to such an extent that respondent, Ford Motor Company, shall not be required to do anything or be restrained from doing anything pursuant to said subparagraph, which prior to the entry of this order and decree it might have been required to do or restrained from doing by subparagraphs (i) and (k) of said paragraph, such modification to continue, however, only until the provisions of said subparagraph (e) without such modifications are imposed in substantially identical terms upon General Motors Corporation and its subsidiaries, either (x) by consent decree, or (y) by final decree of a court of competent jurisdiction not subject to further review or (z) by decree of such court which, although subject to further review, continues effective.

— — —, District Judge.



[fol. 196] IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE NORTHERN DISTRICT OF INDIANA, SOUTH BEND  
DIVISION

No. 1039.

UNITED STATES OF AMERICA

v.

GENERAL MOTORS CORPORATION ET AL.

Indictment

James R. Fleming, United States Attorney. Rus-  
sell Hardy, Special Assistant to the Attorney  
General.

Returned May 27, 1938

[fol. 196-1] IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE NORTHERN DISTRICT OF INDIANA, SOUTH BEND  
DIVISION

FEBRUARY TERM, A. D. 1938

THE UNITED STATES OF AMERICA

v.

1. General Motors Corporation
2. General Motors Sales Corporation
3. General Motors Acceptance Corporation
4. General Motors Acceptance Corporation of Indiana.  
Incorporated
5. E. W. Berger
6. George F. Benkhart
7. M. E. Coyle
8. James D. Deane

9. Nelson C. Dezendorf
10. August Freise
11. Richard H. Grant
12. Roy Hill
13. W. E. Holler
14. W. F. Hufstader
15. H. J. Klingler
16. William S. Knudsen
17. Russell Leshner
18. Ralph W. Moore
19. W. J. Mougey
20. Arthur B. Purvis
21. John J. Schumann, Jr.
22. Alfred P. Sloan, Jr.
23. G. I. Smith

[fols. 196-2] The Grand Jurors of the United States, within and for the Northern District of Indiana, impaneled, sworn, and charged in said Court at the term and division aforesaid, to inquire for the United States for the Northern District of Indiana, upon their oaths charge and present that:

1. For many years heretofore, to and including the day of the finding and presentation of this indictment, a very large part of the supply of automobiles in the United States has been produced by General Motors Corporation, Ford Motor Company, and Chrysler Corporation and corporations controlled by Chrysler Corporation.

2. During the period from January 1, 1934, to and including the day of the finding and presentation of this indictment, approximately sixteen million new automobiles have been made and sold at wholesale and retail in the United States. General Motors Corporation has made approximately seven millions of said automobiles, Ford Motor Company approximately four millions, and Chrysler Corporation and its controlled corporations approximately four millions. The remaining one million automobiles have been made by from twelve to fifteen other manufacturers.

3. The automobiles made by General Motors Corporation have been manufactured at plants in the States of Michigan, Wisconsin, Missouri, Georgia, New York, New

Jersey, and California. Those made by the Ford Motor Company have been manufactured at plants in the States [fol. 196-3] of Michigan, Minnesota, Illinois, Ohio, Pennsylvania, New York, New Jersey, Massachusetts, Virginia, Tennessee, Kentucky, Missouri, Georgia, Texas, and California. Those made by Chrysler Corporation and its controlled corporations have been manufactured at plants in the States of Michigan, Indiana, and California.

4. During the three years next preceding the finding and presentation of this indictment there have been approximately forty thousand persons and corporations in the several States, known as automobile dealers, who have been engaged in the business of buying and selling the automobiles made by General Motors Corporation, Ford Motor Company, and Chrysler Corporation and its controlled corporations. Approximately fifteen thousand of said dealers located in all of the States, and known and referred to in this indictment as General Motors dealers, have been buying and selling automobiles made by General Motors Corporation.

5. General Motors Sales Corporation has been the selling agency for the automobiles made by General Motors Corporation, and has been regularly and continuously making contracts with General Motors dealers for the sale of the automobiles made by General Motors Corporation. In pursuance of said contracts, the automobiles made by General Motors Corporation, as aforesaid, have been regularly and continuously transported from the aforesaid places of [fol. 196-4] manufacture to dealers located in other States, including many dealers located in the Northern District of Indiana.

6. During the three years next preceding the finding and presentation of this indictment, and for many years theretofore, General Motors Corporation, General Motors Sales Corporation, Ford Motor Company and Chrysler Corporation and its controlled corporations, have required that payment for all automobiles sold by them be on a cash basis and before the transportation and shipment thereof from the places where manufactured; and in pursuance of such requirement all of said automobiles have been paid for before such transportation and shipment.

7. During the period from January 1, 1934, to and including the day of the finding and presentation of this indictment, approximately twelve and a half billion dollars have been paid to automobile manufacturers for automobiles transported and shipped to dealers. Approximately six and a half billion dollars of said sum have been paid for automobiles made by General Motors Corporation, two and a half billion for automobiles made by Ford Motor Company and two and a half billion for automobiles made by Chrysler Corporation and its controlled corporations.

8. Because of the high unit prices of automobiles which have been demanded and procured by General Motors Corporation, General Motors Sales Corporation, Ford Motor Company, and Chrysler Corporation and its controlled corporations, because said corporations have required payment to be made on a cash basis before the transportation, shipment, and delivery of automobiles to dealers, and because it has been necessary for the great majority of dealers to procure a stock of automobiles varying in color, body style, and otherwise, far beyond their financial ability to pay for on a cash basis as required by said corporations, a large supply of money has been regularly and continuously necessary and has been regularly and continuously furnished and used to pay said corporations for the automobiles transported, shipped and delivered to the dealers in pursuance of the contracts aforesaid.

9. For many years heretofore, to and including the day of the finding and presentation of this indictment, many companies, called automobile finance companies, have been created and organized, and have been regularly and continuously engaged in furnishing the money which has been necessary, as aforesaid, and which has been paid to said corporations for the automobiles aforesaid.

10. During the three years next preceding the finding and presentation of this indictment, the great majority of the dealers, in order to procure and pay for the automobiles, have been regularly and continuously entering into contracts and arrangements with certain so-called affiliated automobile finance companies, that is to say, General Motors Acceptance Corporation, General Motors Acceptance Corporation of Indiana, Incorporated, Universal



Credit Corporation and corporations controlled by it, and Commercial Credit Company and corporations controlled by it, in the performance of which contracts said finance companies have furnished a very large part of the money paid to General Motors Corporation, General Motors Sales Corporation, Ford Motor Company, and Chrysler Corporation and its controlled corporations, for the automobiles sold to the dealers.

11. In the case of Cadillac, LaSalle, Buick, Oldsmobile, Pontiac, and Chevrolet automobiles, General Motors Corporation and General Motors Sales Corporation have transferred to General Motors Acceptance Corporation and General Motors Acceptance Corporation of Indiana, Incorporated, title to and ownership thereof at and before the transportation and shipment of said automobiles from the places of manufacture.

12. In the case of Ford automobiles, Ford Motor Company has transferred to Universal Credit Corporation and corporations controlled by it, title to and ownership of the automobiles at and before the transportation and shipment of said automobiles from the places of manufacture.

13. In the case of Chrysler, Dodge, DeSoto, and Plymouth automobiles, Chrysler Corporation and corporations controlled by it have transferred to Commercial Credit Company and corporations controlled by it, title to and ownership of the automobiles at and before the transportation and [fols. 196-7] shipment of said automobiles from the places of manufacture.

14. In pursuance of the aforesaid contracts and arrangements, the custody and possession, but not the title and ownership, of the automobiles have been taken and retained by the dealers until purchasers therefor in retail transactions have been procured.

15. During the three years next preceding the finding and presentation of this indictment, many of the dealers, in order to procure and pay for automobiles, have been regularly and continuously entering into contracts and arrangements with approximately Three Hundred Seventy-five (375) corporations, known as independent automobile finance companies, located and doing business in

all of the States, in the performance of which contracts the finance companies have furnished a large part of the money paid to General Motors Corporation, General Motors Sales Corporation, Ford Motor Company, and Chrysler Corporation and its controlled corporations, for the automobiles sold to the dealers.

16. General Motors Corporation, General Motors Sales Corporation, Ford Motor Company, and Chrysler Corporation and its controlled corporations, have refused to transfer to any of said independent automobile finance companies, title to and ownership of automobiles.

17. In the further performance of said contracts the dealers have transferred to said independent [fols. 196-8] finance companies the title to and ownership of the automobiles at and before their transportation and shipment from the places of manufacture; and the custody and possession of the automobiles have been taken and retained by the dealers until purchasers therefor in retail transactions have been procured.

18. During the period from January 1, 1934, to and including the day of the finding and presentation of this indictment, said affiliated and independent finance companies have furnished approximately five and a half billion dollars in the aforesaid transactions. The so-called affiliated companies have furnished approximately four and a half billion dollars, and the so-called independent companies have furnished approximately one billion.

19. Pursuant to the aforesaid contracts between dealers and affiliated and independent automobile finance companies, title to the automobiles has remained in the finance companies, and said automobiles have not been removed, used, demonstrated, or sold by the dealers to purchasers in retail transactions, until payment has been made to the finance companies of the money furnished by them for the procurement of the automobiles as aforesaid.

20. For many years heretofore, to and including the day of the finding and presentation of this indictment, the dealers have been regularly and continuously making contracts and arrangements with so-called retail purchasers [fols. 196-9] for the sale to them of all of said

automobiles; and in pursuance of said contracts and arrangements all of said automobiles have been sold and delivered to such purchasers.

21. The great majority of the retail sales of said automobiles have been made upon terms in which part of the price has been paid at the time of the sale, a used automobile has been taken in trade, and the remainder of the price has been paid in installment payments. Such transactions will be hereinafter referred to as time sales.

22. During the period from January 1, 1934, to and including the day of the finding and presentation of this indictment, approximately six and a half million automobiles have been sold in such time sales.

23. Because of the high unit prices for automobiles which have been demanded and procured in retail transactions, because the manufacturers aforesaid have required payment to be made on a cash basis before transportation, shipment and delivery of automobiles, as aforesaid, because it has been necessary for all or almost all of the dealers to procure the full purchase price of the automobile at the time of each retail transaction, and because the great majority of retail purchasers of automobiles have not had the financial ability to pay on a cash basis, a large supply of money has been regularly and continuously necessary, and has been regularly and continuously furnished and used to pay the manufacturers, dealers and finance companies aforesaid for the automobiles aforesaid.

[fol. 196-10] 24. During the period from January 1, 1934, to and including the day of the finding and presentation of this indictment, said finance companies have furnished approximately six billion dollars for such time sales. General Motors Acceptance Corporation and General Motors Acceptance Corporation of Indiana, Incorporated, have furnished approximately two billion dollars of such sum, the other affiliated finance companies named in paragraph ten (10) of this indictment have furnished approximately two and a half billion dollars, and the approximately Three Hundred Seventy-five (375) independent finance companies have furnished approximately one and a half billion dollars.

25. In all or almost all of the aforesaid retail sales of new automobiles, it has been necessary for the dealers to take, and they have taken, in the transactions of sale, and as part of the consideration for the new automobiles, used automobiles owned by the purchasers of the new automobiles.

26. During the period from January 1, 1934, to and including the day of the finding and presentation of this indictment, approximately eight million used automobiles have been taken in trade by the dealers in the manner aforesaid, and the dealers have been regularly and continuously making contracts and arrangements with other persons for the sale of said used automobiles.

27. Because of the high unit prices of said used automobiles, because the great majority of purchasers thereof have not had the financial ability to pay on a cash basis, and because it has been necessary in order to carry on the trade and commerce in automobiles herein described for the dealers to quickly dispose of said used automobiles and to procure the purchase price therefor at the time of the sale, a large supply of money has been regularly and continuously necessary for making said sales, and has been regularly and continuously furnished for that purpose by the automobile finance companies in the manner aforesaid.

28. The Grand Jurors aforesaid, upon their oath aforesaid, do further present that General Motors Corporation and General Motors Sales Corporation are corporations under the laws of the State of Delaware, General Motors Acceptance Corporation is a corporation under the laws of the State of New York, and General Motors Acceptance Corporation of Indiana, Incorporated, is a corporation under the laws of the State of Indiana; that at all times stated in this indictment General Motors Corporation, General Motor Sales Corporation, General Motors Acceptance Corporation, and General Motors Acceptance Corporation of Indiana, Incorporated, have had branch offices and places of business in almost all of the several States, including the State of Indiana, and the Northern District thereof, at which they have had divers officers, employees, representatives, and agents actively engaged in the management, direction, and control of their affairs



and business and of the interstate trade and commerce herein described.

29. Whenever in this indictment reference is made to General Motors Acceptance Corporation, it is intended to include General Motors Acceptance Corporation of Indiana, Incorporated.

30. Said General Motors Corporation, General Motors Sales Corporation, General Motors Acceptance Corporation, and General Motors Acceptance Corporation of Indiana, Incorporated, have been acting together in and in connection with the manufacturing, selling, financing the sale of, and distributing Cadillac, La Salle, Buick, Oldsmobile, Pontiac, and Chevrolet automobiles, herein referred to as General Motors automobiles, and in selling, financing the sale of, and distributing used automobiles of any make sold and handled by General Motors dealers, as described in this indictment.

31. General Motors Corporation, General Motors Sales Corporation, General Motors Acceptance Corporation, and General Motors Acceptance Corporation of Indiana, Incorporated, are made defendants to this indictment.

32. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that said defendant corporations, at all times stated in this indictment, have had divers officers, employees, representatives, and agents, who have been actively engaged in the management, direction, and control of the affairs and business of said corporations in and in connection with the interstate trade and commerce herein described, and that a list of the names of such officers, employees, representatives and agents, so far as they are known to said Grand Jurors (Christian names unknown to said Grand Jurors being indicated by initial letters), is as follows:

- |                        |                           |
|------------------------|---------------------------|
| 1. E. W. Berger        | 11. H. J. Klingler        |
| 2. George F. Benkhart  | 12. William S. Knudsen    |
| 3. M. E. Coyle         | 13. Russell Lësher        |
| 4. James D. Deane      | 14. Ralph W. Moore        |
| 5. Nelson C. Dezendorf | 15. W. J. Mougey          |
| 6. August Freise       | 16. Arthur B. Purvis      |
| 7. Richard H. Grant    | 17. John J. Schumann, Jr. |
| 8. Roy Hill            | 18. Alfred P. Sloan, Jr.  |
| 9. W. E. Holler        | 19. G. I. Smith           |
| 10. W. F. Hufstader    |                           |

33. Said persons are made defendants to this indictment.

34. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that continuously for many years heretofore, to and including the day of the finding and presentation of this indictment, at and within the Northern District of Indiana, and in the aforesaid division thereof, said defendants and other persons and corporations to the Grand Jurors unknown, unlawfully have engaged in a conspiracy in restraint of the aforesaid trade and commerce among the several States in Cadillac, La [fol. 196-14] Salle, Buick, Oldsmobile, Pontiac, and Chevrolet automobiles; and, the defendants have conspired to do all acts and things, and to use all means necessary and appropriate to make said restraint effective, including the means, acts, and things hereinafter more particularly alleged, and other means, acts, and things to the Grand Jurors unknown.

35. It has been a purpose of the defendants and an object of said conspiracy to procure, monopolize and keep within their control to the greatest extent possible, and to the exclusion of all other persons and corporations, the business of financing the trade and commerce in Cadillac, LaSalle, Buick, Oldsmobile, Pontiac and Chevrolet automobiles, and in used automobiles of any make sold and handled by General Motors dealers.

36. As a part of said conspiracy, the defendants have arranged and agreed among themselves—

37. To require dealers to promise and agree to deal with General Motors Acceptance Corporation for financing the purchases and sales of automobiles, as a condition to entering into contracts for the sale, transportation and delivery of automobiles to dealers, as aforesaid.

38. To require dealers to promise and agree not to deal with any automobile finance company other than General Motors Acceptance Corporation for financing the purchases and sales of automobiles, as a condition to entering into contracts for the sale, transportation and delivery of automobiles to dealers, as aforesaid.

[fol. 196-15] 39. To make all contracts for automobiles with dealers for a term of one year only, and to reserve

therein the right to cancel and terminate the same, without cause and upon short notice, in order to exercise said right in cases where dealers shall fail and refuse to have purchases and sales of automobiles financed by General Motors Acceptance Corporation, and in cases where dealers shall have purchases and sales of automobiles financed by automobile finance companies other than General Motors Acceptance Corporation.

40. To threaten, suggest and intimate to dealers that contracts for automobiles with them may and will be cancelled and terminated in cases where the dealers fail and refuse to have purchases and sales of automobiles financed by General Motors Acceptance Corporation, and in cases where dealers have had purchases and sales of automobiles financed by automobile finance companies other than General Motors Acceptance Corporation.

41. To cancel and terminate contracts for automobiles with dealers in cases where the dealers fail and refuse to have purchases and sales of automobiles financed by General Motors Acceptance Corporation, and in cases where dealers have had purchases and sales of automobiles financed by automobile finance companies other than General Motors Acceptance Corporation.

42. To refuse and fail to furnish, transport and deliver automobiles to dealers who have refused and failed to [fol. 196-16] have purchases and sales of automobiles financed by General Motors Acceptance Corporation.

43. To refuse and fail to furnish, transport and deliver automobiles to dealers who have had purchases and sales of automobiles financed by automobile finance companies other than General Motors Acceptance Corporation.

44. To examine and inspect the books, records and accounts of dealers for the purpose of procuring information relative to the financing of purchases and sales of automobiles by automobile finance companies other than General Motors Acceptance Corporation.

45. To coerce and compel dealers to permit the defendants and their agents to examine and inspect the books, records, and accounts of the dealers for the purpose of procuring information relative to the financing of pur-

chases and sales of automobiles by automobile finance companies other than General Motors Acceptance Corporation.

46. To coerce and compel dealers to disclose, furnish, and report information relative to the financing of purchases and sales of automobiles by automobile finance companies other than General Motors Acceptance Corporation.

47. To procure information from the servants and employees of dealers, relative to the financing of purchases and sales of automobiles by automobile finance companies [fol. 196-17] other than General Motors Acceptance Corporation, secretly, covertly, and without the knowledge of the dealers, and sometimes by means of bribery and otherwise.

48. To require and demand of dealers that they explain and justify the financing of purchases and sales of automobiles by automobile finance companies other than General Motors Acceptance Corporation.

49. To coerce and compel dealers to refrain from having the purchases and sale of automobiles financed by automobile finance companies other than General Motors Acceptance Corporation, by any and all other means which may be deemed by the defendants to be necessary, appropriate, and effective to that end, which other means are to the Grand Jurors unknown.

50. To give, furnish, accord, and make available to dealers having purchases and sales of automobiles financed by General Motors Acceptance Corporation services, facilities, privileges, favors, conveniences, and other preferential treatment, in and in connection with financing the purchase and sale, transportation, and delivery of automobiles, and to refuse the same to dealers having purchases and sales of automobiles financed by automobile finance companies other than General Motors Acceptance Corporation.

51. To delay the transportation, shipment, and delivery of automobiles to dealers having the purchases and sales [fol. 196-18] of automobiles financed by automobile finance companies other than General Motors Acceptance Corporation.



52. To discriminate against dealers having purchases and sales of automobiles financed by automobile finance companies other than General Motors Acceptance Corporation, and in favor of dealers having such purchases and sales financed by General Motors Acceptance Corporation, with regard to the number, model, color, and style of automobiles transported and delivered to them, with regard to the time of transportation and delivery thereof, and with regard to the manner and form, and time and place of payment therefor.

53. To give, furnish, accord, and make available to General Motors Acceptance Corporation places, offices, and quarters in the plants, factories, offices, and quarters of General Motors Corporation, General Motors Sales Corporation, and of corporations affiliated with and controlled by them, for engaging in and acquiring the business of financing the purchase, sale, transportation, and delivery of automobiles to dealers; and to refuse the same to any other automobile finance company.

54. To give, furnish, accord, and make available to General Motors Acceptance Corporation information relative to the purchase and sale, and transportation and delivery of automobiles to dealers, including information relative to the description and identification of such automobiles; and to refuse the same to any other automobile finance company.

[fol. 196-19] 55. To give, furnish, accord, and make available to General Motors Acceptance Corporation any and all contracts, instruments, and other writings, requested, necessary and appropriate for its security and protection in and in connection with financing the purchase and sale, transportation and delivery of automobiles to dealers, and to refuse the same to any other automobile finance company.

56. To transfer directly to General Motors Acceptance Corporation the title to automobiles before the transportation and delivery thereof to dealers, for the protection and security of General Motors Acceptance Corporation in and in connection with financing the purchase and sale, and transportation and delivery thereof; and to refuse the same to any other automobile finance company.

57. To make and enforce discriminatory, onerous, and unreasonable requirements relative to the manner, form, and time of payment for automobiles, for application to all automobile finance companies except General Motors Acceptance Corporation, and to dealers having the purchase and sale of automobiles financed by such companies.

58. To advertise, endorse, recommend and promote, and to coerce and require dealers to advertise, recommend and promote the use of the automobile financing services, plans and facilities of General Motors Acceptance Corporation.

59. To coerce and require dealers not to advertise, recommend and promote the use of the automobile financing services, plans and facilities of any automobile finance company other than General Motors Acceptance Corporation.

60. To establish and fix a price or charge to be collected by General Motors Acceptance Corporation from purchasers of Cadillac, LaSalle, Buick, Oldsmobile, Pontiac and Chevrolet automobiles, and of used automobiles handled by General Motors dealers, in all transactions financed by those corporations (said price or charge being known as the GMAC differential); and to pay to the dealer a substantial part thereof, as a rebate, participation and payment for diverting the business of financing such purchases to General Motors Acceptance Corporation and away from other automobile finance companies.

61. To regularly and continuously advertise and represent to purchasers of said automobiles that no such rebates, participations and payments have been and will be included in, and paid out of, such differential; and to induce, assist and require dealers to make, and join with and assist the defendants in making such representation.

62. To regularly and continuously conceal, and induce, assist and require dealers to conceal, from purchasers of said automobiles, the fact that such rebates, participations and payments have been and will be included in and paid out of the GMAC differential.

[fol. 196-21] 63. The defendants originated, introduced,

and began the practice of making said rebates, participations and payments to dealers in or about the year 1925, and have regularly and continuously engaged therein from then to and including the day of the finding and presentation of this indictment.

64. The effect of said practice has been to make it necessary for other automobile finance companies, in order to continue in the business of financing transactions in General Motors automobiles, to engage in the same practice.

65. During the period from the year 1925 to and including the day of the finding and presentation of this indictment, General Motors Acceptance Corporation has paid to dealers, as such rebates, participations and payments, more than one hundred million dollars; and for the year 1937 more than fifteen million dollars.

66. During the period from the year 1925 to and including the day of the finding and presentation of this indictment, all automobile finance companies, so far as to the Grand Jurors known, have paid to dealers, as such rebates, participations and payments, more than three hundred million dollars, and for the year 1937 more than sixty million dollars.

67. For the purpose of effectuating the aforesaid conspiracy, for many years heretofore, to and including the [fol. 196-22] three years next preceding the finding and presentation of this indictment, at and within the Northern District of Indiana, and the aforesaid division thereof, said defendants have regularly and continuously carried out, performed, engaged in and committed all of the arrangements, agreements, discriminations, threats, requirements, and other acts, practices and things herein alleged, and have regularly and continuously given and made the aforesaid rebates, participations and payments.

68. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that at all times stated in this indictment, Ford Motor Company, Universal Credit Corporation, Commercial Investment Trust Corporation and others, Chrysler Corporation and corporations controlled by it, and Commercial Credit Corporation and others, have been engaged in conspiracies in restraint of

interstate trade and commerce in so-called Ford, Chrysler, Dodge, DeSoto and Plymouth automobiles similar to the conspiracy described in this indictment.

69. During the three years next preceding the finding and presentation of this indictment, General Motors Corporation, Ford Motor Company, and Chrysler Corporation and corporations controlled by it, have together produced more than ninety per cent of the supply of automobiles which has been required by the dealers for the continuation of their businesses, and each of said manufacturers has conducted its interstate trade and [fol. 196-23] commerce in automobiles substantially in the manner and according to the system described in this indictment.

70. At all times stated in this indictment, the automobile dealers, including the General Motors dealers, have had substantial investments of money, credit, and property in their businesses of purchasing and selling automobiles, as aforesaid; said investments and businesses would have been greatly reduced in value and destroyed by the defendants carrying out the aforesaid intimations, suggestions, threats, cancellations, and statements; and to prevent such destruction, loss and damage of and to their investments and businesses, all or almost all of the dealers, have complied with said intimations, suggestions, threats, and statements.

71. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that the effect of the aforesaid conspiracy, and the acts, practices, and things in this indictment stated, has been to burden, obstruct, and unduly restrain the aforesaid interstate trade and commerce in General Motors automobiles.

72. And so the Grand Jurors aforesaid, upon their oath aforesaid, do say that the defendants, and other persons and corporations to the Grand Jurors unknown, throughout the three years next preceding the finding and presentation of this indictment, at the places, and in the manner and form, aforesaid, unlawfully have engaged [fols. 196-24-197] in a conspiracy in restraint of trade and commerce among the several States in General Motors automobiles.



Contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

James R. Fleming, United States Attorney. Russell Hardy, Special Assistant to Attorney General.

A true copy: Attest: Margaret Long, Clerk, by Helen Mulrey, Deputy Clerk.

[fol. 198] IN UNITED STATES DISTRICT COURT

[Title omitted].

[File endorsement omitted.]

NOTICE OF SUBMISSION OF PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER—Filed July 5, 1946

To: Clifford B. Longley, Esq., Wallace R. Middleton, Esq., Frederick C. Nash, Esq., 1400 Buhl Building, Detroit, Michigan. Crumpacker, May, Carlisle & Beamer, 811 J. M. S. Building, South Bend, Indiana, Attorneys for Respondent Ford Motor Company.

To: Samuel S. Isseks, Esq., 30 Broad Street, New York, N. Y. Alphonse A. LaPorte, Esq., One Park Avenue, New York, N. Y. Scheer, Scheer & Taylor, 408 Oddfellows Bldg., South Bend, Indiana, Attorneys for Respondents Commercial Investment Trust Corporation, et al.

Please take notice that the proposed order, with findings of fact and conclusions of law, a copy of which is [fol. 199] attached hereto, has been submitted by complainant, United States of America, to the Clerk of the Court for signature by Honorable Patrick T. Stone, United States District Judge.

Dated: July 2, 1946.

— — —, Holmes Baldridge, Special Assistant to the Attorney General.

[fol. 200] IN UNITED STATES DISTRICT COURT

[Title omitted].

ORDER GRANTING COMPLAINANT'S MOTION AND  
DENYING RESPONDENTS' MOTIONS FOR MODIFICATION  
OF THE FINAL DECREE AS MODIFIED

This matter came on to be heard by the Court on a motion of the United States for modification of the final decree as modified, and on motion of respondents for modification of the final decree as modified, and the Court having heard argument, and counsel having submitted briefs, and the Court having considered the matter,

Now, therefore, it is ordered, adjudged and decreed as follows:

1. The motion of Ford Motor Company seeking a suspension of sub-paragraphs (i) and (k) of Paragraph 6 of the decree, sub-paragraph (d) of Paragraph 7 of the decree, and such parts of sub-paragraph (e) of Paragraph 6 of the decree as may be necessary to do the things now prohibited by sub-paragraphs (i) and (k) of Paragraph 6, until such time as they shall be imposed [fol. 201] upon General Motors Corporation and its subsidiaries, either by consent decree, or by final decree of a court of competent jurisdiction not subject to further review, or by decree of such court which, although subject to further review, continues effective, be and the same is hereby denied.

2. The motion of Commercial Investment Trust Corporation and others seeking a suspension of sub-paragraphs (i) and (k) of Paragraph 6 of the decree, sub-paragraph (d) of Paragraph 7 of the decree, and such parts of sub-paragraph (e) of Paragraph 6 of the decree as may be necessary to do the things now prohibited by sub-paragraphs (i) and (k) of Paragraph 6, until such time as they shall be imposed upon General Motors Corporation and its subsidiaries, either by consent decree, or by final decree of a court of competent jurisdiction not subject to further review, or by decree of such court which, although subject to further review, continues effective, be and the same is hereby denied.

3. The motion of Ford Motor Company that an order be entered pursuant to Paragraph 12 of the decree, permitting Ford Motor Company to acquire and retain ownership of and control over or interest in any finance company, be and the same is hereby denied.

It is ordered further that the aforesaid final decree as modified shall be and is hereby modified so that the second paragraph of Paragraph 12 thereof shall read as follows:

It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1947, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner [fol. 202] provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted.

And it is further ordered, adjudicated, and decreed that except as thus modified, the modified decree as previously entered shall stand in full force and effect.

By the Court:

Dated: —, 1946.

—, Patrick T. Stone, United States District  
Judge.

[fol. 203] IN UNITED STATES DISTRICT COURT

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW  
ON COMPLAINANT'S MOTION TO MODIFY THE FINAL DECREE,  
AS MODIFIED, AND ON RESPONDENTS' MOTIONS TO SUSPEND  
CERTAIN PROVISIONS OF THE FINAL DECREE.

The Court makes the following findings of fact:

1. That jurisdiction was specifically retained in this Court for the purpose of requiring compliance with the terms of the decree, or for the purpose of modifying the decree upon proper showing.

2. That this Court has jurisdiction to hear and dispose of the subject matter of complainant's motion and of respondents' motions.

3. That certain provisions of Paragraphs 6 and 7 of the decree herein were to be suspended in the event of failure of complainant to secure general verdicts of guilty against General Motors Corporation, General Motors Acceptance Corporation and others in a then pending criminal anti-trust proceedings by January 1, 1940.

4. That the Court takes judicial notice of the fact that general verdicts of guilty were obtained against General Motors Corporation, General Motors Acceptance Corporation and others on November 17, 1939, and that such general verdicts were sustained on appeal.

[fol. 204] 5. That the trial court in its instructions to the jury in the criminal antitrust proceedings against General Motors Corporation, et al., held that the agreements, acts, and practices enjoined in Paragraphs 6 (i), 6 (k), and 7 (d) of the Ford decree herein, among others, constituted a proper basis for the return of a general verdict of guilty.

6. That under Paragraph 12 a(2) of the decree herein, the general verdict of guilty in the General Motors case, under the instructions to the jury by the trial court, is equivalent to a decree restraining the performance by General Motors Corporation of such agreement, acts, or practices as are enjoined herein by Paragraphs 6 (i), 6 (k), and 7 (d), and other paragraphs of the decree.



7. That the prohibitions contained in Paragraphs 6 (i), 6 (k), and 7 (d) of the decree herein have been imposed in substantially identical terms upon General Motors Corporation and General Motors Acceptance Corporation as a result of the general verdict of guilty against them under proper instructions from the trial court in accordance with the provisions of Paragraph 12 a(2) of the decree herein.

8. That respondents are not laboring under any competitive disadvantage with General Motors Corporation and General Motors Acceptance Corporation in the manufacture, sale, and financing of Ford cars by virtue of the prohibitions contained in Paragraphs 6 (i), 6 (k), and 7 (d) of the decree herein, and offered no evidence showing competitive disadvantage.

9. That the decree provided for a termination of the bar against affiliation, if the civil proceedings against General Motors Corporation and General Motors Acceptance Corporation were not successfully concluded by a court of last resort by January 1, 1941.

10. That by agreement among the parties the date for termination of the bar against affiliation has been extended from time to time to January 1, 1946.

11. That the provisions of Paragraph 12 of the decree relating to the bar against affiliation, were framed upon the basis that the ultimate rights of the parties thereunder should be determined by the Government's civil antitrust suit against General Motors Corporation and General Motors Acceptance Corporation.

12. That time was not of the essence with respect to lapse of the bar against affiliation.

13. That complainant has proceeded diligently and expeditiously in its suit to divorce General Motors Acceptance Corporation from General Motors Corporation.

14. That further extension of the bar against affiliation will not impose a serious burden upon respondent, Ford Motor Company, and will not place respondent, Ford Motor Company, at a competitive disadvantage as regards General Motors Corporation.

15. That respondent, Ford Motor Company, has offered

no proof that further extension of the bar against affiliation will place it at a competitive disadvantage with General Motors Corporation.

The Court rules as a matter of law:

1. That the Court has jurisdiction to entertain the several motions and to make a proper order, or orders, pursuant thereto.

[fols. 206-207] 2. That under Paragraph 12 a(2) of the decree, general verdicts of guilty against General Motors Corporation and others in the criminal antitrust proceedings, under proper instructions from the trial court, must be considered the equivalent of a decree against General Motors Corporation restraining the performance by General Motors Corporation of any agreements, acts, or practice which the trial court, in its instructions to the jury, held was a violation of the Sherman Act.

3. That under Paragraph 12 a(3) of the decree herein, the restraints imposed by sub-paragraphs (d) to (f) and (h) to (l), inclusive, of Paragraph 6, and sub-paragraphs (a), (c), and (d) of Paragraph 7, are not subject to suspension provided the equivalent of a decree, as set out in Paragraph 12 a(2), is secured against General Motors Corporation.

4. That the purpose and intent of Paragraph 12 was to provide that the test of the permanency of the bar against affiliation was to abide the outcome of the civil antitrust suit against General Motors Corporation, and that the time clause was subsidiary to such main purpose.

5. That the purpose and intent of the decree will be carried out if Ford Motor Company is given the opportunity at any future time to propose a plan for the acquisition of a finance company, and to make a showing that such plan is necessary to prevent Ford Motor Company from being placed at a competitive disadvantage during the pendency of complainant's civil litigation against General Motors Corporation, et al.

Dated this—day of—1946.

—, Patrick T. Stone, United States District Judge.

[fols. 208-209] IN UNITED STATES DISTRICT COURT

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER—  
July 25, 1946

The United States has moved that this Court extend the period provided in paragraph 12 of the consent decree entered in this cause on November 15, 1938 beyond January 1, 1946, the date to which it was previously extended by consent of the parties, and respondent Ford Motor Company has opposed this motion and in turn moved that this Court enter an order pursuant to paragraph 12 that nothing in said consent decree shall preclude said respondent from acquiring and retaining ownership of, control over or interest in any finance company, or from dealing with such finance company and with said respondent's dealers in the manner provided in said decree or in any order of modification or suspension thereof entered pursuant to paragraph 12 a thereof. In addition, respondent Ford Motor Company has moved pursuant to paragraph 12 a of said decree that the provisions of subparagraphs (i) and (k) of paragraph 6 of said decree be suspended until similar provisions are imposed upon General Motors Corporation and that subparagraph (e) of said paragraph 6 be modified to the extent necessary to permit said respondent to do those things prohibited by said subparagraphs (i) and (k) which might also be prohibited by said subparagraph (e) such modification to continue until provisions similar to said subparagraph (e) without such modification are imposed on General Motors Corporation. Also, all respondent finance companies have moved for suspension of subparagraph (d) of paragraph 7 of said decree until a similar provision is imposed upon General Motors Acceptance Corporation.

All of said motions have been heard upon affidavits and arguments of counsel in open court, the complainant appearing by Wendell Berge, Esq. Assistant Attorney General, Holmes Baldrige, Esq. Special Assistant to the Attorney General, Alexander M. Campbell, Esq. United [fols. 210-211] States Attorney for the Northern District of Indiana, the respondent Ford Motor Company appearing by Clifford B. Longley, Esq. Wallace R. Middleton, Esq., Frederick C. Nash, Esq., and Messrs. Crumpacker, May, Carlisle & Beamer, and the respondents, Commer-

cial Investment Trust Corporation, et al, appearing by Samuel S. Isseks, Esq., Alphonse A. La Porte, Esq. and Messrs. Scheer, Scheer and Taylor, and Russell Hardy, Esq. having, with the permission of the Court, filed a brief amicus curiae, and the Court, having considered the proofs, the arguments of counsel, and the briefs filed, and being fully advised in the premises, makes the following Findings of Fact and Conclusions of Law;

### Findings of Fact

1. That the purpose of the second unnumbered paragraph of paragraph 12 of said decree was not only to protect respondent, Ford Motor Company, from the competitive disadvantage that might result from the continued ownership of General Motors Acceptance Corporation by General Motors Corporation if the civil suit of The United States against General Motors Corporation to require it to divest itself of General Motors Acceptance Corporation was delayed, but also to give respondent, Ford Motor Company, an opportunity to defend itself on the question of affiliation, after the time limit set forth in such paragraph had expired.

2. That the suit instituted by the United States against General Motors Corporation to require that corporation to divest itself of ownership of General Motors Acceptance Corporation is still pending in the United States District Court at Chicago, Illinois, and has not been reached for trial. However, the plaintiff has proceeded diligently and expeditiously in its said suit.

3. That jurisdiction of this action was specifically retained in this Court for the purpose of requiring compliance with the terms of the decree, or for the purpose of modifying the decree upon proper showing.

4. That this Court has jurisdiction to hear and dispose of the subject matter of complainant's motion and of respondents' motions.

[fols. 212-213] 5. That certain provisions of Paragraph 6 and 7 of the decree herein were to be suspended in the event of failure of complainant to secure general verdicts of guilty against General Motors Corporation, General Motors Acceptance Corporation and others in a then pending criminal antitrust proceeding by January 1, 1940.



6. That the Court takes judicial notice of the fact that general verdicts of guilty were obtained against General Motors Corporation, General Motors Acceptance Corporation and others on November 17, 1939, and that such general verdicts were sustained on appeal.

7. That the trial court in its instructions to the Jury in the criminal antitrust proceedings against General Motors Corporation, et al., held that the agreements, acts, and practices enjoined in Paragraphs 6 (i), 6 (k) and 7 (d) of the Ford decree herein, among others, constituted a proper basis for the return of a general verdict of guilty.

8. That under Paragraph 12 a (2) of the decree herein, the general verdict of guilty in the General Motors case, under the instructions to the jury by the trial court, is equivalent to a decree restraining the performance by General Motors Corporation of such agreement, acts, or practices as are enjoined herein by paragraphs 6 (i) 6 (k) and 7 (d) and other paragraphs of the decree.

9. That the prohibitions contained in Paragraphs 6 (i) 6 (k) and 7 (d) of the decree herein have been imposed in substantially identical terms upon General Motors Corporation and General Motors Acceptance Corporation as a result of the general verdict of guilty against them under proper instructions from the trial court in accordance with the provisions of Paragraph 12a(2) of the decree herein.

10. That respondents are not laboring under any competitive disadvantage with General Motors Corporation and General Motors Acceptance Corporation in the manufacture, sale, and financing of Ford cars by virtue of the prohibitions contained in Paragraphs 6(i) 6 (k) and 7 (d) of the decree herein, and offered no evidence showing competitive disadvantage.

[fols. 214-215] 11. That the decree provided for a termination of the bar against affiliation, if the civil proceedings against General Motors Corporation and General Motors Acceptance Corporation were not successfully concluded by a court of last resort by January 1, 1941.

12. That by agreement among the parties the date for

termination of the bar against affiliation has been extended from time to time to January 1, 1946.

13. That the provisions of paragraph 12 of the decree, relating to the bar against affiliation, were framed upon the basis that the ultimate rights of the parties thereunder should be determined by the Government's civil antitrust suit against General Motors Corporation and General Motors Acceptance Corporation.

14. That time was not of the essence with respect to lapse of the bar against affiliation.

15. That respondent, Ford Motor Company, has offered no proof that further extension of the bar against affiliation will place it at a competitive disadvantage with General Motors Corporation.

16. That further extension of the bar against affiliation until January 1, 1947, will not impose a serious burden upon respondent, Ford Motor Company, and will not place respondent, Ford Motor Company, at a competitive disadvantage as regards General Motors Corporation.

#### Conclusions of Law

1. That the Court has jurisdiction to entertain the several motions and to make a proper order, or orders, pursuant thereto.

2. That under Paragraph 12 a(2) of the decree, general verdicts of guilty against General Motors Corporation and others in the criminal antitrust proceedings, under proper instructions from the trial court, must be considered the equivalent of a decree against General Motors Corporation restraining the performance by General Motors Corporation of any agreements, acts, or practices which the trial court, in its instructions to the jury, held was a violation of the Sherman Act.

3. That under Paragraph 12a(3) of the decree herein, the restraints imposed by subparagraphs (d) to (f) and [fols. 216-217] (h) to (l) inclusive, of Paragraph 6, and subparagraphs (a), (c) and (d) of Paragraph 7, are not subject to suspension provided the equivalent of a decree, as set out in Paragraph 12a(2), is secured against General Motors Corporation.

4. That the purpose and intent of Paragraph 12 was to provide that the test of the permanency of the bar against affiliation was to abide the outcome of the civil antitrust suit against General Motors Corporation, and that the time clause was subsidiary to such main purpose.

5. That the purpose and intent of the decree will be carried out if Ford Motor Company is given the opportunity at any future time to propose a plan for the acquisition of a finance company, and to make a showing that such plan is necessary to prevent Ford Motor Company from being placed at a competitive disadvantage during the pendency of complainant's civil litigation against General Motors Corporation, et al.

Now, therefore, it is ordered, adjudged and decreed that:

1. The motion of Ford Motor Company seeking a suspension of subparagraphs (i) and (k) of paragraph 6 of the decree, subparagraph (d) of Paragraph 7 of the decree, and such parts of subparagraph (e) of Paragraph 6 of the decree as may be necessary to do the things now prohibited by subparagraphs (i) and (k) of Paragraph 6, until such time as they shall be imposed upon General Motors Corporation and its subsidiaries, either by consent decree, or by final decree of a court of competent jurisdiction not subject to further review, or by decree of such court, which, although subject to further review, continues effective, be and the same is hereby denied.

2. The motion of Commercial Investment Trust Corporation and others seeking a suspension of subparagraphs (i) and (k) of Paragraph 6 of the decree, subparagraph (d) of Paragraph 7 of the decree, and such parts of subparagraph (e) of Paragraph 6 of the decree as may be necessary to do the things now prohibited by subparagraphs (i) and (k) of Paragraph 6, until such time as they shall be imposed upon General Motors Corporation and its subsidiaries, either by consent decree, or by final decree of a court of competent jurisdiction not [fols. 218-220] subject to further review, or by decree of such court which, although subject to further review, continues effective, be and the same is hereby denied.

3. The motion of Ford Motor Company that an order be entered pursuant to Paragraph 12 of the decree, permitting Ford Motor Company to acquire and retain ownership of and control over or interest in any finance company, be and the same is hereby denied.

It is ordered further that the aforesaid final decree as modified shall be and is hereby modified so that the second paragraph of Paragraph 12 thereof shall read as follows:

It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1947, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein, to make the application and to obtain such order or decree is expressly conceded and granted.

And it is further ordered, adjudged and decreed that except as thus modified, the modified decree as previously entered shall stand in full force and effect. Dated this 25th day of July, 1946.

Patrick T. Stone, United States District Judge.

[fol. 221] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed September 17, 1946

To the Honorable Patrick T. Stone, District Judge:

Your petitioner, Ford Motor Company respectfully shows:



1. Petitioner is one of the respondents in the above entitled cause.

2. On the 25th day of July, 1946 an order was entered in the above entitled cause

(1) Which denied the motion of your petitioner seeking a suspension of subparagraphs (i) and (k) of paragraph 6 of the consent decree entered in this cause on November 15, 1938 and a suspension of subparagraph (d) of paragraph 7 of said decree, and of such parts of subparagraph (e) of paragraph 6 of said decree as should be suspended to permit your petitioner to do those things prohibited by said subparagraphs (i) and (k) which might also be prohibited by said subparagraph (e), until such time as [fol. 222] the provisions so suspended shall be imposed upon General Motors Corporation and its subsidiaries, either by consent decree, or by final decree of a court of competent jurisdiction not subject to further review, or by decree of such court which, although subject to further review, continues effective;

(2) Which denied the motion of your petitioner that an order be entered pursuant to paragraph 12 of said consent decree permitting Ford Motor Company to acquire and retain ownership of and control over or interest in any finance company;

(3) Which modified said consent decree so that the second paragraph of paragraph 12 thereof reads as follows:

It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1947, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or con-

trol over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted.

3. A direct review of such order by the Supreme Court of the United States may be had pursuant to Section 345 of Title 28 of United States Code which provides, so far as is material here, that

"A direct review by the Supreme Court of an interlocutory or final judgment or decree of a district court may be had where it is so provided in the following sections or parts of sections and not otherwise: (1) Section 29 of Title 15," • • •

Said Section 29 of Title 15 of United States Code provides, so far as is material here, that

[fol. 222 "A"] "In every suit in equity brought in any district court of the United States under Sections 1-7 of this Title, wherein the United States is complainant, an appeal from the final decree of the district court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof:" • • •

The above entitled cause is a suit in equity brought in a District Court of the United States under Sections 1-7 of said Title, wherein the United States is complainant and the above described order is a final judgment or decree within the meaning of such statute.

4. Your petitioner deems itself aggrieved by such order for the reasons specified in the assignment of errors which is filed herewith.

Wherefore your petitioner prays that it may be permitted to take an appeal from said order to the Supreme Court of the United States, that the amount of security

for costs on such appeal be fixed, that a citation issue and that a transcript of the record proceedings and papers on which said order was based be made and duly authenticated and sent to the Supreme Court.

Dated September 17th, 1946.

(sgd.) Clifford B. Longley, Clifford B. Longley  
(sgd.) Wallace R. Middleton, Wallace R. Middleton,  
Attorneys for Respondent, Ford Motor  
Company.

S.J. Crumpacker.

Received copy of the above statement this 19th day of September, 1946. Alexander M. Campbell, United States Attorney, by James E. Keating, Deputy.

[fol. 223] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed September 17, 1946

Now comes Ford Motor Company, Respondent in the above entitled cause, and files the following assignment of errors upon which it will rely in the prosecution of the appeal herewith petitioned for in said cause from the order of this court entered on the 25th day of July, 1946 denying the motion of this respondent for relief from parts of the consent decree entered herein on the 15th day of November, 1938 and amending paragraph 12 of said consent decree:

1. The court erred in finding (Finding of Fact No. 7) that the trial court in its instructions to the jury in the criminal anti-trust proceedings against General Motors Corporation, et al., held that the agreements, acts and practices enjoined in paragraphs 6(i) and 7(d) of the decree in this cause (i.e. the arrangement by respondent with any finance company, or by any respondent finance company with this respondent, for a visit to a dealer or prospective dealer for the purpose of influencing him to patronize such finance company) constituted a proper basis for the return of a general verdict of guilty in those proceedings, as such finding was not supported by the evidence, and, because of such error, also erred in finding [fol. 224] (Finding of Fact No. 8) that such general verdict of guilty was the equivalent of a decree restrain-

ing the performance by General Motors Corporation and General Motors Acceptance Corporation of such agreements, acts and practices, and in finding (Finding of Fact No. 9) that the prohibitions imposed on this respondent by said paragraphs 6(i) and 7(d) had been imposed in substantially identical terms upon General Motors Corporation and General Motors Acceptance Corporation as a result of such general verdict, and in denying this respondent's motion for a suspension of the restraints contained in said paragraphs and for a suspension of such portion of paragraph 6(e) of the decree as restrains the performance by this respondent of the acts, practices and agreements also restrained by said paragraphs 6(i) and 7(d).

2. The court erred in finding (Finding of Fact No. 7) that the trial court in its instructions to the jury in the criminal anti-trust proceedings against General Motors Corporation, et al., held that the agreements, acts and practices enjoined in paragraph 6(k) of the decree in this cause (i.e. the recommending, endorsing and advertising of any finance company to respondent's dealers or to the public) constituted a proper basis for the return of a general verdict of guilty in those proceedings, as such finding was not supported by the evidence, and, because of such error, also erred in finding (Finding of Fact No. 8) that such general verdict of guilty was the equivalent of a decree restraining the performance by General Motors Corporation of such agreements, acts and practices, and in finding (Finding of Fact No. 9) that the prohibitions imposed on this respondent by paragraph 6(k) had been imposed in substantially identical terms upon General Motors Corporation as a result of such general verdict, and in denying this respondent's motion for a suspension of the restraints contained in such paragraph and for a suspension of such portion of paragraph 6(e) of the decree as restrains the performance by this respondent of the acts, practices and agreements restrained by said paragraph 6(k).

[fol. 225] 3. The court erred in finding (Finding of Fact No. 10) that this respondent is not laboring under any competitive disadvantage with General Motors Corporation in the manufacture, sale and financing of Ford cars by virtue of the prohibitions contained in paragraphs



6(i), 6(k) and 7(d) of the decree herein, and offered no evidence showing competitive disadvantage, as such finding was not supported by the evidence.

4. The court erred in amending paragraph 12 of the decree in this cause by substituting the date January 1, 1947 therein in lieu of the date January 1, 1946 and in denying the motion of this respondent for the entry of an order to the effect that nothing in said decree shall preclude this respondent from acquiring and retaining ownership of and/or control over or interest in any finance company or from dealing with such finance company and with the dealers in the manner provided in said decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a thereof.

5. The court erred in finding (Finding of Fact No. 13) that the provisions of paragraph 12 of the decree, relating to the bar against affiliation, were framed upon the basis that the ultimate rights of the parties thereunder should be determined by the Government's civil anti-trust suit against General Motors Corporation and General Motors Acceptance Corporation, as such finding was not supported by the evidence.

6. The court erred in finding (Finding of Fact No. 14) that time was not of the essence with respect to lapse of the bar against affiliation as such finding was not supported by the evidence.

7. The court erred in concluding (Conclusion of Law No. 4) that the purpose and intent of paragraph 12 was to provide that the test of the permanency of the bar against affiliation was to abide the outcome of the civil anti-trust suit against General Motors Corporation, and that the time clause was subsidiary to such main purpose.

[fol. 226] 8. The court erred in finding (Finding of Fact No. 2) that the Government has proceeded diligently and expeditiously in its said civil anti-trust suit against General Motors Corporation, as such finding is not supported by the evidence.

9. The court erred in finding (Findings of Fact Nos. 15 and 16) that this respondent offered no proof that further extension of the bar against affiliation will place it at a competitive disadvantage with General Motors Corporation and that further extension of the bar against

affiliation until January 1, 1947 will not impose a serious burden upon this respondent and will not place this respondent at a competitive disadvantage as regards General Motors Corporation, as these findings are not supported by the evidence.

10. The court erred in concluding (Conclusion of Law No. 5) that the purpose and intent of the decree will be carried out if this respondent is given the opportunity at any future time to propose a plan for the acquisition of a finance company and to make a showing that such plan is necessary to prevent this respondent from being placed at a competitive disadvantage during the pendency of the Government's civil litigation against General Motors Corporation, et al.

Wherefore, this respondent prays that the said order may be reversed and that an order be entered herein as follows: (a) granting the motion of this respondent for the suspension of paragraphs 6(i), 6(k) and 7(d) of said decree and of part of paragraph 6(e) of said decree; (b) denying the motion of the Government for substitution of the date January 1, 1947 in lieu of the date January 1, 1946 in paragraph 12 of said decree; (c) granting the motion of this respondent for the entry of an order pursuant to paragraph 12 of the decree that nothing therein shall preclude said respondent from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such [fols. 227-237] finance company and with said respondent's dealers in the manner provided in said decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a thereof; and (d) granting such other and further relief as to the court may seem just and proper.

Dated September 17th, 1946.

(sgd.) Clifford B. Longley, Clifford B. Longley.

(sgd.) Wallace R. Middleton, Wallace R. Middleton,  
Attorneys for Respondent, Ford Motor Company.

Received copy of the above statement this 19th day of September, 1946.

Alexander M. Campbell, United States District  
Attorney, by James E. Keating, Deputy.

[fols. 238-240] IN THE DISTRICT COURT OF THE  
UNITED STATES

FOR THE NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

Civil Action No. 8

UNITED STATES OF AMERICA, Complainant,

vs.

FORD MOTOR COMPANY, COMMERCIAL INVESTMENT TRUST CORPORATION, COMMERCIAL INVESTMENT TRUST, INC., UNIVERSAL CREDIT CORPORATION, UNIVERSAL CREDIT COMPANY OF DELAWARE, UNIVERSAL CREDIT COMPANY OF INDIANA, and UNIVERSAL CREDIT COMPANY, INC., Respondents.

ORDER ALLOWING APPEAL—Filed September 19, 1946

It Is Ordered that the petition of Ford Motor Company, a respondent in the above entitled cause, for an appeal to the Supreme Court of the United States from the order entered in this cause on the 25th day of July, 1946 denying its motion for relief from certain provisions of the consent decree herein and modifying paragraph 12 of said decree be and the same hereby is allowed; and it is further ordered that a certified transcript of the record proceedings and papers be forthwith transmitted to the Supreme Court of the United States under the rules of the Supreme Court in such cases made and provided, and that a citation issue returnable forty days from the date hereof; and it is further ordered that security for costs on appeal be fixed in the sum of \$500.00.

Dated September 18, 1946.

Patrick T. Stone (sgd) District Judge.

Received copy of the above statement this 19th day of September, 1946.

Alexander M. Campbell, United States District Attorney by James E. Keating, Deputy.

[fols. 241-245] Bond on appeal for \$500.00 approved and filed September 19, 1946 omitted in printing.

[fols. 246-247] Citation in usual form showing service on Alexander M. Campbell, filed September 19, 1946, omitted in printing.

[fol. 248] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRAECIPE OF FORD MOTOR COMPANY INDICATING PORTIONS  
OF RECORD TO BE INCORPORATED INTO THE TRANSCRIPT

Filed September 28, 1946

To the Clerk of the Above Court:

You are hereby requested to make a transcript of record to be filed in the Supreme Court of the United States, pursuant to an appeal allowed in the above entitled cause by order of Judge Patrick T. Stone, District Judge, dated September 18, 1946, and to include in such transcript of record the following, to-wit:

- (1) The Complaint of the United States of America.
- (2) The Answer thereto of this Respondent, Ford Motor Company.
- (3) The Consent Decree Entered in this cause on November 15, 1938.
- (4) All Stipulations and Orders entered in said cause between the date of said consent decree and January 1, 1946 extending the date provided in paragraph 12 of said consent decree from January 1, 1941 to January 1, 1946.
- (5) The Motion of the United States of America for Modification of the Final Decree and of the Final Decree as Modified which motion was filed in this cause on or about December 31, 1945.

[fol. 249] (6) The response of this respondent, Ford Motor Company (Filed on or about May 4, 1946) to the motion of the Government designated in Item 5 above.

(7) The motion of this respondent, Ford Motor Company (Filed on or about May 4, 1946) to suspend and modify provisions of consent decree but not including in the transcript the brief of said respondent which was attached to such motion.

(8) The amendment by respondent Ford Motor Company of said motion to suspend and modify provisions of consent decree (which amendment was filed on or about June 5, 1946) together with the exhibits thereto attached



including the affidavit of J. R. Davis dated May 31, 1946, the affidavit of H. M. Cunningham dated May 24, 1946, the affidavit of W. Earl Westen dated May 29, 1946, the affidavit of Charles K. Warren dated May 29, 1946 and the data and charts attached to and made a part of the latter two affidavits.

(9) Certified copy of the indictment, No. 1039, returned by the Grand Jury on May 27, 1938 against General Motors Corporation, General Motors Acceptance Corporation, et al.

(10) Certified copy of the instructions of the trial court in the criminal proceeding instituted in the District Court of the United States for the Northern District of Indiana by the return of the indictment designated in Item 9 above.

(11) Transcript of that portion of the minutes of the proceedings before the District Court in this cause on June 10, 1946 which is hereto attached and which constitutes a portion of the argument of Mr. Baldrige on behalf of the United States.

(12) The proposed order and findings filed by this respondent, Ford Motor Company.

(13) The proposed findings of fact and conclusions of law filed by the United States on complainant's motion to modify the final decree, as modified, and on respondents' motions to suspend certain provisions of the final decree.

(14) The findings of fact, conclusions of law and order signed by Honorable Patrick T. Stone, United States District Judge on the 25th day of July, 1946 and entered in this cause on the same day.

(15) The petition for appeal by this respondent, Ford Motor Company, filed herein on September 17, 1946.

(16) The assignment of errors by this respondent, Ford Motor Company, filed herein on September 17, 1946.

(17) The statement of basis on which appellant contends the Supreme Court of the United States has jurisdiction to review on appeal the order appealed from, as required by Supreme Court Rule 12, filed by this re-

spondent as appellant and presented to Judge Stone with said petition for appeal and assignment of errors.

(18) The order allowing the appeal of this respondent, Ford Motor Company, to the Supreme Court of the United States signed by Honorable Patrick T. Stone, District Judge on September 18, 1946.

[fol. 230] ~~(19)~~ Cost bond in the sum of \$500.00 in connection with the appeal of this respondent, Ford Motor Company.

(20) Statement directing attention of appellee to the provisions of paragraph 3 of Rule 12 of the Revised Rules of the Supreme Court of the United States, filed by this respondent as appellant.

(21) Citation signed by Honorable Patrick T. Stone on September 18, 1946 directed to the United States of America as appellee.

(22) Proof of service of each of the documents designated in Items (15) through (21) inclusive above upon the District Attorney for the Northern District of Indiana.

(23) Acknowledgment of service of the documents designated in Items (15) through (21) inclusive above by Wendell Berge for the United States of America.

(24) Proof of service by registered mail of the documents designated in Items (15) through (21) inclusive above on the Attorney General of the United States.

(25) This praecipe designating portions of the record to be included in the transcript.

(26) Proof of service of this praecipe on the United States of America, and such other matters as, under the rules of the Supreme Court of the United States, you may be required to certify.

(sgd) Clifford B. Longley, Clifford B. Longley

(sgd) Wallace R. Middleton, Wallace R. Middleton,  
Attorneys for Respondent, Ford Motor Company.

[fol. 251] IN THE DISTRICT COURT OF THE UNITED STATES  
 FOR THE NORTHERN DISTRICT OF INDIANA  
 SOUTH BEND DIVISION  
 Civil Action No. 8

UNITED STATES OF AMERICA, Complainant,

vs.

FORD MOTOR COMPANY, COMMERCIAL INVESTMENT TRUST CORPORATION, COMMERCIAL INVESTMENT TRUST, INC., UNIVERSAL CREDIT CORPORATION, UNIVERSAL CREDIT COMPANY OF DELAWARE, UNIVERSAL CREDIT COMPANY OF INDIANA, and UNIVERSAL CREDIT COMPANY, INC., Respondents.

TRANSCRIPT OF THAT PORTION OF THE MINUTES OF THE PROCEEDINGS, HELD AT HAMMOND, INDIANA, ON MONDAY, JUNE 10, 1946 BEFORE HONORABLE PATRICK T. STONE, DISTRICT JUDGE, CONTAINING PARTS OF THE ARGUMENT OF MR. BALDRIDGE ON BEHALF OF THE UNITED STATES.

The following portions of the argument of Mr. Baldridge and the comments of the court in connection therewith are taken from pages 108, 109, 111-115 inclusive, 116-118 inclusive, 120 and 121, of the entire transcript:

(From page 108 of the Transcript) Mr. Baldridge: If the Court please: There has been considerable confusion in the argument thus far with respect to the commitments and obligations undertaken by the federal government when the decrees against Ford and Chrysler were entered on November 15, 1938. Hence, at the risk of being a bit repetitious I should like to explain briefly (p. 109) the background of this litigation and the obligations incurred by the Government as to the three cases.

The three large units in the automobile industry, Ford, Chrysler and General Motors, manufacturing together at that time approximately ninety percent of all the new automobiles manufactured and sold in the United States, [fol. 252] were charged in three separate indictments with conspiring with their affiliated automobile finance companies—the charge was a conspiracy—to monopolize the financing of the sale of cars by coercing dealers of the manufacturer to use the financing facilities of the favored or affiliated factory finance company.

(From page 111 of the Transcript) Now, the purpose of these three lawsuits was two-fold. One, to free the dealer from the restrictive controls imposed upon him by the joint operations of the manufacturer and the affiliated finance company and to make him a true, (p. 112) independent contractor, as his franchise contract with the factory showed that he was. The second purpose was to introduce competition in the finance market in General Motors, Ford and Chrysler cars.

It was the pursuit of these two ends that was responsible for the two decrees entered against Ford and Chrysler. At the time these decrees were entered the indictments against those two concerns were dismissed. No satisfactory arrangements were made with General Motors and General Motors elected to stand trial. The decrees were generally, as far as the factories were concerned, the decrees contained two general prohibitions. One, the factory could not coerce the dealer or give to any finance company benefits or privileges that were not made available to all finance companies desiring such privileges. That is the gist of paragraph 6. The second was paragraph 12, which prohibited the factory from owning an interest in or in any way subsidizing a finance company.

Now, inasmuch as General Motors elected to stand trial, these two provisions, the provisions in paragraph 6 and those in paragraph 12, were to become presently effective, but their ultimate binding effect was dependent upon the outcome of the two suits against General Motors.

[fol. 253] There has been considerable confusion here today as to what the results have been to date in the two General (p. 113) Motors suits as to which of the clauses, paragraph 6 and 12 of the decree, are controlled by the civil suit for divestiture now pending in Chicago and which are controlled by the criminal case tried at South Bend in the fall of 1939.

To illustrate this confusion, Mr. Isseks says that the criminal case which we had to complete by January 1st, 1940, in order to make the provisions of paragraph 6 effective, that that condition was not met by the Government. I call your Honor's attention to the fact that judgment on conviction was entered in the General Motors case on November 17, 1939.

Now, with respect to the type of relief necessary for



the Government to secure in order to make the provisions of paragraph 6 of the Ford decree effective, paragraph 12a provided that the injunctive features of paragraph 6 were to be suspended after January 1st, 1940, unless the Government secured a general verdict of guilty against the then pending criminal suit against General Motors. This must be followed by a judgment and the judgment would be deemed a determination that any act, agreement or practice of General Motors which the trial court in instructions to the jury held to be a proper basis for a general verdict of guilty, would act or substitute for a decree enjoining such practices against General Motors.

Now, I submit, your Honor, that that commitment on (p. 114) the part of the Government, if commitment we must call it, has been fully met. General Motors was convicted on November 17, 1939. The case was appealed to the Circuit Court of Appeals, Seventh Circuit, affirmed on appeal in its entirety, and certiorari denied by the Supreme Court.

The Court: What was Justice Byrnes and Justice Frankfurter talking about in their opinions?

Mr. Baldridge: That, your Honor, has to do with the Chrysler case that arose in this court in 1941.

The Court: Weren't identical consent decrees entered in both cases?

Mr. Baldridge: That is correct; your Honor, but they were talking in that case about the civil suit that is now pending in Chicago, not the criminal suit.

[fol. 254] The Court: I know.

Mr. Baldridge: I haven't yet reached the point in connection with the pending civil suit.

The Court: All right.

Mr. Baldridge: The second condition subsequent was that unless the Government divorced General Motors from its affiliated finance company, General Motors Acceptance Company, by January 1st, 1941, then the bar against affiliation with a finance company was to lapse. That condition has not yet been met by the Government.

Now, I should like to discuss briefly the motions (p. 115) that have been filed by Ford and Commercial Investment Trust with respect to their suggested suspension of the provisions of paragraphs 6 (i), 6 (k), and wherever necessary 6 (e), and 7 (f) of the decree.

• • • • •

(From page 116 of the Transcript) Now, as to the practice enjoined in paragraph (k), admittedly there is no injunction now outstanding against General Motors, either by way of the judge's charge to the jury or otherwise, which prohibits General Motors from advertising its affiliated finance company, GMAC. However, we submit that the other sections in paragraph (k), that a manufacturer shall not recommend or endorse the financing services of any particular finance company is effectively enjoined by the judge's instructions to the jury in the General (p. 117) Motors case, and the subsequent conviction thereon which stands under paragraph 12a as a final determination under the consent decree, stand as an effective injunction against the repetition of that type of practice, as the specific language of paragraph (k) in the Ford decree.

We submit, your Honor, that, except for the bar against affiliation, the decree, and particularly paragraph 6 which defendants have sought to modify, became final upon the conviction of General Motors and the sustaining of that conviction on appeal.

[fol. 255] The Court: There was never any civil judgment entered?

Mr. Baldridge: No, your Honor, but paragraph 12a (2) of this decree provides that the conviction of General Motors under certain instructions made by the trial court shall constitute the same thing as a decree.

The Court: What would you do with General Motors right today if they were doing things which you have enjoined them from doing?

Mr. Baldridge: We could reindict them for a second offense or we could file a civil suit for injunction. We would probably reindict because having been convicted once for this type of practice, an injunction would be probably deemed insufficient and we would move again by indictment.

I should like to call your attention to paragraph 12a (2). It says: (p. 118)

"The determination, in the manner provided in this clause, of the illegality of any agreement, act or practice of General Motors Corporation shall be considered as the equivalent of a decree restraining the

performance by General Motors Corporation of such agreement, act or practice—"

In other words, the conviction of General Motors under a certain type of charge by the trial court to the jury was to act as the equivalent of a civil decree against General Motors enjoining exactly the same practices that are now enjoined in paragraph 6 of the Ford decree.

(From page 120 of the Transcript) Now, the defendants argue that the continuation of the injunction relating to paragraph 6 (i), 6 (k) and 7 (d) places them at a competitive disadvantage. I have already pointed out how General Motors, except for the provision on advertising, is already under prohibitions against repetition of this type of practice, in the sense that paragraph 12a (2) of the decree was to be substituted as an injunction against [fol. 256] General Motors as far as Ford and Chrysler decrees were concerned. Chrysler, of course, is under the same prohibitions as to section 6 as Ford.

The Court: There is nothing on record in any court except the conviction of General Motors?

Mr. Baldridge: Yes, indeed there is, your Honor.

The Court: There is no injunctive relief?

Mr. Baldridge: Oh, no. But paragraph 12a (2) provides (p. 121) that that conviction—

The Court: Is the equivalent—

Mr. Baldridge: Is the equivalent of an injunction. Hence we insist that the Government has fully complied with its bargain, if it must be called that, with respect to the performance and finality of the injunctive provisions contained in paragraph 6 of the decree, some of which the defendants seek suspension of.

[fols. 257-258] IN UNITED STATES DISTRICT COURT

[Title omitted]

PROOF OF SERVICE

STATE OF MICHIGAN

County of Wayne, ss:

BERNADETTE LABELLE, being duly sworn, deposes and says that on the 26th day of September, 1946 she served

a true copy of the attached Praecept of Ford Motor Company Indicating Portions of Record to be Incorporated Into the Transcript upon Alexander N. Campbell, United States Attorney for the Northern District of Indiana and Wendell Berge, Assistant Attorney General by depositing the same in the United States mail in the City of Detroit in sealed envelopes, which envelopes were addressed as follows:

Alexander N. Campbell	Wendell Berge
United States Attorney for	Assistant Attorney General
the Northern District of	Department of Justice
Indiana	Washington, D. C.
South Bend, Indiana	

upon which envelopes the United States postage was fully prepaid.

(sgd) Bernadette LaBelle

Subscribed and sworn to before me this 27th day of September, A.D., 1946, (sgd) Estelle C. Pylar, Notary Public, Wayne County, Michigan, My commission expires June 21-1949 (Seal).

[fol. 259] IN UNITED STATES DISTRICT COURT

[Title omitted]

# PROOF OF SERVICE

STATE OF INDIANA

St. Joseph County, ss:

SHEPARD J. CRUMPACKER, JR., being first duly sworn upon his oath, deposes and says that on the 19th day of September, 1946, he served upon Alexander M. Campbell, United States District Attorney for the Northern District of Indiana, by serving on James E. Keating, Deputy United States District Attorney for the Northern District of Indiana, true copies of the following documents, filed in the above entitled cause:

1. Petition for appeal by Ford Motor Company.
2. Assignment of errors by Ford Motor Company.
3. Statement of basis on which Appellant, Ford Motor Company, contends the Supreme Court has jurisdiction



to review on appeal the order appealed from as required by Supreme Court Rule 12.

4. Order allowing appeal of Ford Motor Company.

5. Citation on appeal of Ford Motor Company.

6. Cost bond in the sum of \$500.00.

7. Statement directing attention to the provisions of Paragraph 3 of Rule 12 of the Revised Rules of Supreme Court of the United States by delivering the same in person to said James E. Keating and having him endorse an acknowledgement of service at the foot of each document.

Further affiant saith not.

Shephard J. Crumpacker, Jr.

Subscribed and sworn to before me this 19th day of September, 1946. Melba M. Weis, My commission expires: 9/30/1948. Notary Public, St. Joseph County, Indiana (Seal).

[fol. 260] IN UNITED STATES DISTRICT COURT

[Title omitted]

PROOF OF SERVICE

Service of a copy of the following papers in the above entitled action is hereby acknowledged this 23rd day of September, 1946:

(1) Petition of Ford Motor Company for appeal to the Supreme Court of the United States from the Final decree of the Northern District of Indiana, South Bend Division, entered July 25, 1946:

(2) Assignment of Errors and Prayer for reversal;

(3) Statement as to Jurisdiction;

(4) Order allowing Appeal;

(5) Citation;

(6) Undertaking for Costs; and

(7) Notice of filing required by Rule 12(2) of the Rules of the Supreme Court.

Wendell Berge, for United States of America:

[fols. 261-262] IN UNITED STATES DISTRICT COURT

[Title omitted]

## PROOF OF SERVICE

STATE OF MICHIGAN

County of Wayne, ss:

ELAINE LENNON, being duly sworn, deposes and says that on the 23rd day of September, 1946 she served upon the Attorney General of the United States true copies of the following documents filed in the above entitled cause:

- (1) Petition for Appeal by Ford Motor Company.
- (2) Assignment of Errors by Ford Motor Company.
- (3) Statement of Basis on Which Appellant Contends the Supreme Court of the United States has Jurisdiction to Review on Appeal the Order Appealed from, As Required By Supreme Court Rule 12.
- (4) Order Allowing Appeal of Ford Motor Company.
- (5) Citation on Appeal of Ford Motor Company.
- (6) Cost Bond in the sum of \$500.00.
- (7) Statement Directing Attention to the Provisions of Paragraph 3 of Rule 12 of the Revised Rules of the Supreme Court of the United States.

by enclosing the same in a sealed envelope addressed as follows:

Attorney General of the United States  
Washington, D. C.

Registered Mail

and by registering the same with and handing the same to a clerk in the United States Post Office, Federal Building, Detroit, Michigan, with postage fully prepaid thereon, all on the 23rd day of September, 1946.

Said envelops bore Registration Number 343562 and the receipt therefor is hereto attached.

Elaine Rita Lennon

Subscribed and sworn to before me this 24th day of September, A.D., 1946, Estelle C. Pyler, Notary Public, Wayne County, Michigan. My Commission expires June 21, 1949.

[fol. 263] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME TO FILE TRANSCRIPT OF RECORD

It appearing to the Court that an appeal is pending in the above entitled cause to the United States Supreme Court, that the forty (40) day period allowed by Rule 10(2) of the Rules of the Supreme Court of the United States, will expire on October 28th, 1946, and for good cause shown to the Court,

It is hereby ordered by the Court, that the time within which the transcript of record in this cause shall be filed with the Clerk of the United States Supreme Court be and the same hereby is extended and enlarged thirty (30) days from and after the 28th day of October, 1946.

Dated this 19th day of October, 1946.

Patrick T. Stone, Judge, United States District Court.

[fol. 264]

CLERK'S CERTIFICATE

Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 1-15]

**IN THE  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION**

No. 8 Civil

UNITED STATES OF AMERICA, Plaintiff,

v.

FORD MOTOR COMPANY, COMMERCIAL INVESTMENT TRUST CORPORATION, COMMERCIAL INVEST TRUST, INC., UNIVERSAL CREDIT CORPORATION, UNIVERSAL CREDIT COMPANY OF DELAWARE, UNIVERSAL CREDIT COMPANY OF INDIANA, and UNIVERSAL CREDIT COMPANY, INC., Defendants,

Be it remembered that heretofore on the 7th day of November, 1938, the above named plaintiff, by the United

States Attorney; James R. Fleming, filed in the office of the Clerk of this Court, a complaint in the above entitled cause, which complaint reads in the words and figures following, to wit:

Complaint omitted. Printed side page. 1 ante.

[fol. 16]. IN UNITED STATES DISTRICT COURT

ANSWER—Filed November 7, 1938

To the Honorable the Judge of the District Court of the United States for the Northern District of Indiana,

Universal Credit Corporation, Universal Credit Company, a Delaware Corporation, Commercial Investment Trust Corporation, Universal Credit Company, an Indiana Corporation, Universal Credit Company, Inc. and Commercial Investment Trust Incorporated, defendants herein, by Phillip W. Haberman, their attorney, answering the complaint herein, respectfully allege as follows:

# I

Defendants admit that Ford Motor Company is engaged in the manufacture and sale of automobiles; that Commercial Investment Trust Incorporated is engaged in the business of financing the sale of automobiles; that defendants Universal Credit Corporation, Universal Credit Company, a Delaware Corporation, Universal Credit Company, an Indiana Corporation, and Universal Credit Company, Inc. are engaged in the business of financing for Ford Dealers exclusively; that Commercial Investment Trust Corporation owns 100% of the outstanding capital stock of Commercial Investment Trust Incorporated and more than 70% of the outstanding capital stock of Universal Credit Corporation; that Universal Credit Corporation owns 100% of the outstanding capital stock of Universal Credit Company, a Delaware corporation, Universal Credit Company, an Indiana Corporation, and Universal Credit Company, Inc; that Universal Credit Corporation was organized in 1928 by Ford Motor Company, which, in 1933, sold all of the stock of Universal [fol. 17] Credit Corporation to Commercial Investment Trust Corporation and since such date the latter company has owned as aforesaid more than 70% of the outstanding



capital stock of Universal Credit Corporation. Except as so admitted defendants deny each and every of the allegations contained in Section I. of the complaint.

## II

Defendants admit that Ford Motor Company, General Motors Corporation and Chrysler Corporation are the principal manufacturers of motor cars in the United States and are competitors with each other; that certain automobiles manufactured by said manufacturers have been transported and delivered in interstate commerce; that there are many persons, firms and corporations, including these defendants (other than defendant Commercial Investment Trust Corporation) which are engaged in the business of financing the sale of automobiles by manufacturers to dealers and in financing the sale of automobiles by dealers to retail purchasers. Except as so admitted defendants deny each and every of the allegations of Section II of the complaint.

## III

Defendants deny each and every of the allegations contained in Section III of the complaint.

## IV

Defendants deny each and every of the allegations contained in Section IV of the complaint.

AS AND FOR SEPARATE AND ADDITIONAL DEFENSES DEFENDANTS ALLEGE:

## V

First additional defense: The Court lacks jurisdiction of the subject matter of the complaint.

## VI

Second additional defense: The complaint fails to state a claim against defendants upon which relief can be granted.

Third additional defense; Defendants Universal Credit Corporation and Commercial Investment Trust Incorporated, and certain of their respective subsidiaries, acquire retail time sales paper from dealers in the automobiles manufactured by Ford Motor Company, and in the case of Commercial Investment Trust Incorporated from dealers of other manufacturers, on various bases, including the following; the majority of such paper is purchased from the dealer on the basis of his agreement to repurchase the automobile covered thereby if repossessed and returned to him under specified terms and conditions; a smaller proportion of such paper is acquired on a basis whereby the dealer is fully liable as endorser or guarantor for the payment of the purchase price by the retail buyer, or is acquired on a basis whereby the dealer has no responsibility or liability, or is in substance pledged by the dealer as security for a loan.

The amount received by dealers in respect of their retail time sales paper so acquired by said defendants is a matter of agreement with the dealer and depends in general upon the basis upon which the paper is acquired by the said defendants; moreover, as between dealers whose paper is acquired on the same basis the amounts received by them may vary depending upon business and competitive conditions.

In general, the dealer whose paper is so acquired receives a portion of the finance charge (meaning thereby the amount by which the total price of an automobile purchased on the instalment plan exceeds the total price of that automobile purchased for cash); the amount, time and conditions of payment of such portion of the finance charge vary as between the different bases and as between dealers whose paper is acquired on the same basis, by reason of business and competitive conditions.

All of the variations and all of the practices referred to in the foregoing paragraphs of this Section VII are matters of universal competition between the said defendants and a large number of banks and other persons, firms and corporations (exceeding 500 in number) who are also engaged in the business of acquiring such paper from said dealers [fol. 19] on one or more of said bases, and said bases, the

amounts received by the dealers for their paper and the amounts and times and conditions of payment of the portion of the finance charge to dealers in respect thereof are matters of free and open competition, and are arrived at and maintained without consultation or agreement between defendants and defendant Ford Motor Company, and without any other participation by Ford Motor Company.

Regardless of whether or not any of the other matters alleged in the complaint involves interstate commerce or Section I of the Act of Congress of July 1, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies", 26 Stat. 209, commonly known as the Sherman Anti-Trust Act, the acts and practices of the defendants set forth in the foregoing paragraphs of this Section and the alleged acts and practices of the defendants referred to in paragraph 18 of Section III of the complaint, considered alone or in combination with any other acts and practices established before the Court, are not commerce or a part of interstate commerce, do not involve interstate commerce, do not involve any restraint of trade or commerce contrary to the Sherman Anti-Trust Act, and this Court does not have jurisdiction thereof.

If, which the defendants deny, their acts and practices referred to in the foregoing paragraphs of this Section VII are within the jurisdiction of this Court or involve any restraint of trade or commerce contrary to the Sherman Anti-Trust Act, either alone or in combination with any other acts and practices established before this Court, no relief is required to be granted to the complainant herein with respect to any of said acts and practices in order that defendants may thereafter conduct their business in accordance with the Sherman Anti-Trust Act in respect of said acts and practices described herein or the alleged Acts and practices of the defendants referred to in paragraph 18 of Section III of the complaint which may be established before the Court, and no relief should be granted to the complainant herein with respect thereto.

[fol. 20] For a long period of time prior to the filing of the Complaint herein, each of the defendants named in the Complaint has voluntarily refrained from exercising many of its legal rights (which are the subject of, but are inaccurately described in, Section III of the complaint) so that the entire competitive situation in the industry has

changed and so that if any relief should have been granted based upon conditions prior thereto, no relief should now be granted.

Any relief granted to the complainant in respect of the acts and practices of the defendants referred to in this section VII of the Answer or referred to in paragraph 18 of Section III of the Complaint would create great competitive disadvantages to the defendants and great competitive advantages to competitors of the defendants unless such competitors were subjected to similar restraints, and would unreasonably and unjustly restrain competition between the defendants and said competitors, so that if any relief is granted to complainant, it should be such relief as will not place the defendants at a competitive disadvantage with their several competitors.

Phillip W. Haberman, Attorney for Defendants, Address: One Park Avenue, New York, N. Y.

Harold F. Birnbaum, Of. counsel. Address: One Park Avenue, New York, N. Y.

[fols. 21-46] Final decree of Nov. 15, 1938 omitted. Printed side page, 23 ante.

[fol. 47] Order of appointment omitted. Printed side page, 89 ante.

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[fols. 48-49] IN UNITED STATES DISTRICT COURT

NOTICE OF MOTION—Filed May 4, 1946

Sirs:

Please Take Notice, that on the motion filed herewith on behalf of Respondents Commercial Investment Trust Corporation, Commercial Investment Trust, Inc., Universal Credit Corporation, Universal Credit Company of Delaware, Universal Credit Company of Indiana and Universal Credit Company, Inc. and made pursuant to paragraph 12a of the consent decree dated November 15, 1938, to suspend subparagraphs (i) and (k) of paragraph 6 and subparagraph (d) of Paragraph 7, and to modify subparagraph (e) of Paragraph 6, and on the memorandum submitted in support of such motion, such re-



spondents request that an oral hearing be had on the motion at such time and place as is specified by the Court.

Dated May 4, 1946.

Respectfully submitted, Scheer, Scheer & Taylor,  
408 Odd Fellows Building, South Bend, Indiana,  
Samuel S. Isseks, 30 Broad Street, New York  
City, New York, Alphonse A. La Porte, One  
Park Avenue, New York City, New York, Attor-  
neys for respondents Commercial Investment  
Corporation, et al.

Hon. Alexander M. Campbell, United States Attorney  
for the Northern District of Indiana, South Bend,  
Indiana. Hon. Wendell Berge, Assistant attorney gen-  
eral, Department of Justice, Washington, D. C.

[fol. 50] IN UNITED STATES DISTRICT COURT  
[Title omitted]

MOTION TO SUSPEND PROVISIONS OF CONSENT DECREE  
ENTERED NOVEMBER 15, 1938—Filed May 4, 1946

Respondents, Commercial Investment Trust Corpora-  
tion; Commercial Investment Trust, Inc., a corporation;  
Universal Credit Corporation; Universal Credit Company  
of Delaware, a corporation; Universal Credit Company of  
Indiana, a corporation; and Universal Credit Company,  
Inc., by their attorneys, Scheer, Scheer and Taylor, Samuel  
S. Isseks, and Alphonse A. Laporte, move pursuant to sub-  
paragraphs (2) and (3) of Paragraph 12a of the consent  
decree entered on November 15, 1938, between the United  
States of America and the respondents in the above entitled  
cause, that the provisions of subparagraphs (i) and (k) of  
Paragraph 6 of the consent decree entered on November 15,  
1938 be suspended until they shall be imposed in substan-  
tially identical terms upon General Motors Corporation and  
its subsidiaries, and that the provisions of subparagraph  
(d) of Paragraph 7 of such decree be suspended until they  
shall be imposed in substantially identical terms upon  
General Motors Acceptance Corporation, and its subsid-  
iaries, either (x) by consent decree, or (y) by final decree  
of a court of competent jurisdiction not subject to further  
review, or (z) by decree of such court, which, although

subject to further review, continues effective; and that the provisions of subparagraph (e) of Paragraph 6 of [fol. 51] such decree be modified, during the suspension of subparagraphs (i) and (k) of Paragraph 6 and subparagraph (d) of Paragraph 7, to the extent that such subparagraph (e) now enjoins any of the acts prohibited by subparagraphs (i) and (k) of Paragraph 6.

The following are reasons why the relief prayed for should be granted:

1. Paragraph 12a of the consent decree, after referring to a proceeding then pending in this court against General Motors Corporation instituted by the filing of an indictment by the Grand Jury on May 27, 1938, No. 1039, provides in part as follows:

“(2) A general verdict of guilty returned against General Motors Corporation in said proceeding, followed by the entry of judgment thereon, shall be deemed to be a determination of the illegality of any agreement, act or practice of General Motors Corporation which is held by the trial court, in its instructions to the jury, to constitute a proper basis for the return of a general verdict of guilty. A special verdict of guilty returned against General Motors Corporation in said proceeding, followed by the entry of judgment thereon, shall be deemed to constitute a determination of the illegality of any agreement, act or practice of General Motors Corporation which is the subject of such special verdict of guilty. A plea of guilty or nolo contendere by General Motors Corporation, followed by the entry of judgment of conviction thereon, shall be deemed to be a determination of the illegality of any agreement, act or practice which is the subject matter of such plea. The determination, in the manner provided in this clause, of the illegality of any agreement, act or practice of General Motors Corporation shall (for the purpose of clause (3) of this paragraph) be considered as the equivalent of a decree restraining the performance by General Motors Corporation of such agreement, act or practice, unless or until such judgment is reversed, or unless such determination is based, in whole or in part, (a) upon

the ownership by General Motors Corporation of General Motors Acceptance Corporation, or (b) upon the performance by General Motors Corporation of such agreement, act or practice in combination with some other agreement, act or practice with which the respondents are not charged in the indictment heretofore filed against them by the Grand Jury on May 27, 1938, No. 1041:

"(3) After the entry of a consent decree against General Motors Corporation, or after the entry of a litigated decree, not subject to further review, against General Motors Corporation by a court of the United States of competent jurisdiction, or after the entry of a judgment of conviction against General Motors Corporation in the proceeding hereinbefore referred to, or after January 1, 1940 (whichever date is earliest), the court upon application of any respondent from time to time will enter orders:

[fol. 52] (i) suspending each of the restraints and requirements contained in subparagraphs (d) to (f) and (h) to (l), inclusive, of Paragraph 6 of this decree to the extent that it is not then imposed, and until it shall be imposed, in substantially identical terms, upon General Motors Corporation and its subsidiaries, and suspending each of the restraints and requirements contained in subparagraphs (a), (c) and (d) of Paragraph 7 of this decree to the extent that it is not imposed and until it shall be imposed in substantially identical terms, upon General Motors Acceptance Corporation and its subsidiaries, either (w) by consent decree, or (x) by final decree of a court of competent jurisdiction not subject to further review, or (y) by decree of such court which, although subject to further review, continues effective, or (z) by the equivalent of such a decree as defined in clause (2) of this paragraph; provided, however, that if the provisions of a consent or litigated decree against General Motors Corporation and its subsidiaries corresponding to subparagraphs (j) and (k) of Paragraph 6 of this decree are different from said subparagraphs of this decree, then upon application of the respondents any pro-

vision or provisions of said subparagraphs will be modified so as to conform to the corresponding provisions of such General Motors Corporation decree;

(ii) suspending each of the restraints and requirements contained in the remaining subparagraphs (a), (b), (c) and (g) of Paragraph 6 to the extent that it is not then imposed, and until it shall be imposed, upon General Motors Corporation and its subsidiaries in any manner specified in the foregoing sub-clause (i) of clause (3), if any respondent shall show to the satisfaction of the court that General Motors Corporation or its subsidiaries is performing any agreement, act or practice prohibited to the Manufacturer by said remaining subparagraphs, and suspending each of the restraints and requirements contained in subparagraph (b) of Paragraph 7 of this decree to the extent that it is not imposed, and until it shall be imposed, upon General Motors Acceptance Corporation and its subsidiaries in any said manner, if any respondent shall show to the satisfaction of the court that General Motors Acceptance Corporation is performing any agreement, act or practice prohibited to Respondent Finance Company by said subparagraph (b) of paragraph 7;

(iii) suspending the restraints of subparagraph (d) of Paragraph 7 of this decree as to Respondent Finance Company, in the event that the restraints of subparagraph (i) of Paragraph 6 of this decree are suspended as to the Manufacturer.

"(4) The right of the respondents or any of them to make any application for suspension of any provision of this decree in accordance with the provisions of this paragraph and to obtain such relief is hereby expressly granted."

2. In 1939, the petitioner herein instituted criminal proceedings against General Motors Corporation, General Motors Sales Corporation, General Motors Acceptance Corporation, General Motors Acceptance Corporation of Indiana, et al., in the Northern District of Indiana. The Government obtained a conviction against General Motors [fol. 53] Corporation and General Motors Acceptance



Corporation, among others, which convictions were subsequently affirmed.

3. A copy of the instructions of the Trial Court to the jury in the General Motors case is attached hereto and made a part hereof and marked Exhibit "A". Such instructions and their interpretation by the Circuit Court of Appeals of the Seventh Circuit, in the case of United States v. General Motors Corporation, 121 Fed. 2d 376, show clearly that the Trial Court in its instructions held that the only agreements, acts, or practices of General Motors Corporation and General Motors Acceptance Corporation which constitute a proper basis for a general verdict of guilty were those which coerced General Motors dealers and retail purchasers to finance their cars with a company with whom they would not have financed their cars had they been free of such coercion. The Trial Court in its instructions stated (pp. 5984 to 5987):

"It is not unreasonable for the General Motors Company to have a finance company. It is not unreasonable for the General Motors Company to have contracts with its dealers for a year or to have a cancellation clause in them. They have a perfect right to have a finance company and to recommend its use. They have a perfect right to cancel a contract from their dealer as long as they are not performing any unreasonable act.

"They have a right to determine whom they will sell their cars to, and they have a right to determine whom they will not sell their cars to because cars are their product and they are their property and no law compels them to sell them to any man they don't want to sell them to; but that is not the charge in this case. The charge is not that by having difficulty in contracts in itself, these defendants did anything wrong; it is not charged here that to recommend the use of GMAC there is anything wrong; it is not charged here that cancellation for cause is anything wrongful; but the Government's theory in this case is irrespective of these contracts and independent of them and outside of them the conditions have been asserted that they, under the designation of those to the grand jurors unknown, the actions have been such

that the possibility, the ability to cancel, the ability to refuse dealers to force them to use GMAC and that these acts that are complained of were acts that were used to force the dealers to use GMAC, the Government insists that these acts inspired by that motive have been such as to result in cancellations that otherwise would not have occurred; in discriminations that would not otherwise have occurred [fol. 54] in the shipment of cars in interstate commerce and in refusals to renew that would not otherwise have occurred, and in the use of GMAC when it otherwise would not have been used.

"In other words, the Government has no right to complain, and it may not complain of the defendants' rights to limit its sales of cars to persons whom it may select, its right to determine who it shall sell to, its rights to determine upon what terms it will sell, its right to pick its own dealers.

"It can only complain if the defendants do sufficient of those acts charged in the indictment as constitute duress upon the dealer to accomplish a result that would have otherwise not have been accomplished, and to make a dealer do something that he would not have done of his own free will.

"That, almost, is the question in this case—whether the dealer could act as a free man; whether he could act of his own free will.

"The defendants say:

"We never imposed any restrictions upon that freedom of action."

"The Government says it did and there is that question. If it did—if the defendants did that sort of thing—and if it resulted in an unreasonable restriction and unreasonable restraint of interstate commerce, then you would have a right to find them guilty.

"If they did not do it, this lawsuit is at an end, and that is a question which you have got to decide."

4. Nowhere in the instructions to the jury in the General Motors case, or in the interpretation of such instructions by the Circuit Court of Appeals, is there any language from which it can be concluded that any of the matters enjoined in subparagraphs (i) and (k) of Para-

graph 6 of such decree, and subparagraph (d) of Paragraph 7 of such decree were held by the trial court to constitute a proper basis for the return of the general verdict of guilty. On the contrary, the trial court, in its instructions to the jury in the General Motors case, in substance stated that the matters prohibited in such subparagraphs were proper (p. 5987-5988):

"You know you have heard of the terms: exposition; persuasion; argument; coercion.

"They are different steps. They are graduated steps that I suppose every salesman goes through, except perhaps the last.

"In exposition one may expound the merits of that which he has to sell; he may explain its nature [fol. 55] and by his exposition make a clear picture of what he has.

"By persuasion he may endeavor to persuade the person to whom he is talking to accept that which he has to offer.

"There is little advancement in his further progress, to argue.

"Persuasion means something softer than argument, perhaps, but he may argue with him and argue with him the respective merits of his product and other products being offered to the person to whom he makes his offer.

"All of these are proper. He may not go beyond that and use something that is within his power to use as a club to coerce the person to accept that which he has to offer."

And again at p. 6013-6014:

"I think I said to you yesterday that the defendants may expound the alleged advantages of General Motors Acceptance Corporation; they may explain fully the characteristics of its operations, as they claim they exist; they may point out the advantages; they may expound all of those things; they may persuade; they may use persuasion in their conversations, in their communications with their dealers; they may even argue. Those things are all proper. They have a right, as I have said, to determine to whom they shall sell their automobiles and to whom

they shall not. Those things constitute no violation of the law.

" . . . and the charge in this indictment is, that this coercion, this misuse that has proceeded, according to the indictment beyond exposition, persuasion and argument, has resulted in a situation where the commerce in General Motors Corporation, the products of General Motors, from state to state, has been unreasonably restricted and restrained."

5. No consent decree or other decree of a court of competent jurisdiction has ever imposed upon General Motors Corporation or its subsidiaries, either in substantially identical terms or otherwise, any of the restraints and requirements contained in Paragraph 6 of the decree in this cause nor has a decree of either type ever imposed upon General Motors Acceptance Corporation or its subsidiaries, either in substantially identical terms or otherwise, any of the restraints and requirements contained in Paragraph 7 of the decree in this cause.

6. At the time of the entry of the consent decree, representatives of the Department of Justice recognized that the prohibitive provision of the decree with respect to advertising was not an unreasonable restraint of trade in violation of the Anti-trust Law.

(a) Thurman Arnold, then Assistant Attorney General [fol. 56] in charge of the Anti-Trust Division of the Department of Justice, in a press release dated November 7, 1938, approved by Homer Cummings, then Attorney General, stated:

"Such a method of advertising has never been held to be violative of the antitrust laws, and the legality of its use, in the absence of positive fraud, has not been questioned.

"There are no precedents which compel the adoption of such restrictions on advertising."

(b) Holmes Baldrige, Special Assistant to the Attorney General, stated on page 13 of the stenographic minutes, at the time the consent decree was submitted to the Court:

"It is the Department's idea, the one with respect



to advertising, the other with respect to adoption of a Code of Fair Competition, that this public benefit goes far beyond anything that we could hope to accomplish in a litigated case, besides eliminating the discriminatory practices and coercion complained of by the independents in this suit."

Prior thereto, on May 18, 1938, the Department of Justice, in connection with the institution of the automobile finance investigation in South Bend, announced that any voluntary disposition of the cases would be only on the basis of the companies investigated agreeing to provisions which otherwise could not be obtained under existing law.

7. From the entry of the decree up to the early part of 1942, respondents' business in financing Ford cars had diminished substantially. This resulted from the fact that thousands of commercial banks located throughout the country, which previously were not in the field of financing automobiles, had entered into such field of business. Shortly after the United States entered the war in December, 1941, the manufacture of new automobiles ceased and respondents were not engaged in the financing of new automobiles, except to a very limited extent.

In 1941, the Board of Governors of the Federal Reserve System issued Regulation W, which set forth the terms and conditions under which automobiles could be financed at retail. With the lifting of the restrictions on the manufacture of new cars, respondents have found themselves faced with new economic and competitive factors in [fol. 57] connection with the financing of automobiles. The unprecedented volume of liquid funds held by individuals today will reduce the volume of installment financing. Regulation W is still in effect. Also, many more commercial banks are contemplating entering the installment finance field. Several months ago twelve large banks located in twelve key cities in the United States announced a so-called National Sales Finance Plan directed at the financing of retail installment purchases of automobiles and household appliances. These twelve banks are endeavoring to obtain the signature to this Plan of thousands of other banks. The twelve banks

mentioned above have total resources of well over four billion dollars and, with the other banks joining the Plan, will without doubt make great inroads in the field of automobile financing. In addition, the Morris Plan Corporation of America has announced that it will enter the same field. As recently as April 1, 1946, Irving Trust Company of New York, with total resources in excess of one billion dollars, announced that it had entered the installment loan field, including the financing of automobiles.

8. On information and belief, no other manufacturer of automobiles (except Chrysler Corporation), no manufacturer of other products sold on installments, no other finance company (except Commercial Credit Corporation), and no bank in this country engaged in financing installment sales of either automobiles or other products, is subject to prohibitions or injunctive provisions similar to those set forth in subparagraphs (i) and (k) of Paragraph 6 and subparagraph (d) of Paragraph 7 of the consent decree. Thus, the respondents are at a competitive disadvantage as against their competitors, and particularly as against General Motors Corporation and General Motors Acceptance Corporation. Because of this competitive disadvantage, the provisions for modification of Paragraph 12a were included in the consent decree so that the respondents would be relieved from certain prohibited acts if substantially similar injunctive provisions or the equivalent thereof, were not obtained against General Motors and General Motors Acceptance Corporation. This was specifically stated by the Government prior to and at the time of the entry of the decree, as shown by the following:

(a) Robert H. Jackson, then Assistant Attorney General, in a letter dated November 29, 1937, to Henry H. Hogan, Assistant General Counsel of General Motors Corporation, wrote in part as follows:

"The decree will also contain provisions designed to protect the defendants from competitive disadvantages which they may experience in the event that the restrictions contained in the decree are not applied to their competitors."

(b) Thurman Arnold, in a letter dated November 5, 1938, to Phillip W. Haberman, Counsel for Respondents, stated in part as follows:

"I have told you throughout our conferences that the position of the Department of Justice is that no decree under the Sherman Antitrust Act should be such as to place the defendants at a competitive disadvantage in the industry, and that the Government's policy is to enforce the antitrust laws so as to restore and maintain free competition in the industry in which such decrees are entered."

(c) Holmes Baldrige and Thurman Arnold stated at pages 15 and 16 of the stenographic minutes of the hearing before Hon. Thomas W. Slick, United States District Judge for the Northern District of Indiana, at the time the final decree was submitted:

"Mr. Baldrige \* \* \*

Paragraph 12 states what we might designate as so-called estoppel clause; provided that, neither the Ford nor Chrysler decrees shall continue to be effective in the event of failure to convict General Motors and the General Motors Acceptance in the trial of the Criminal Cause. That provision was put in for this reason, if the Department is unable to stop these alleged discriminations and coercion, against General Motors, it would place Ford and Chrysler, who have agreed to give them up, at a decided distinct disadvantage, so that the effectiveness of this decree is made contingent upon the conviction of the General Motors and the General Motors Acceptance. The decrees will become effective one hundred twenty days after entering, but the effectiveness of both will be discontinued in the event of failure to convict the General Motors and General Motors Acceptance Company."

"The Court: I wonder what possible effect that might have on the prosecution of the other defendants, to say: this shall not be effective unless you convict certain other defendants?"

"Mr. Arnold: We had to do that in order to [fol. 59] prevent the General Motors securing a com-

petitive advantage over the other companies. They are highly competitive; they have cars in the same price-class, and, if General Motors can continue with the practices that the Government is opposed to, when the Ford and Chrysler must desist, it places them at a distinct competitive advantage over their competitors."

(d) Thurman Arnold, in a public statement approved by Homer Cummings, said at page 11 of a release of the Department of Justice dated November 7, 1938:

"General Motors has not proposed an acceptable plan for a consent decree, and therefore the case against that group must be vigorously prosecuted. In the meantime the voluntary decrees proposed by Chrysler and Ford will go into effect, if accepted by the Court. However, the failure to General Motors to participate has made it necessary to insert provisions in the decrees insuring the Ford and Chrysler groups that General Motors will not be put on a favored basis in the event that the prosecution against it is unsuccessful. To do otherwise might enable General Motors to enjoy an unwarranted competitive advantage over Ford and Chrysler resulting from the voluntary cooperation of the latter companies with the Government. Obviously, in view of the predominant position in the automobile field occupied by these three companies, the Department cannot restrain two of them only, unless it subsequently succeeds in securing relief against the practices of the third."

Wherefore, the respondents pray for the relief hereinabove requested.

Dated, —, 1946.

Respectfully submitted, — —, Scheer, Scheer & Taylor, 408 Odd Fellows Building, South Bend, Indiana. /s/ Samuel S. Isseks, Samuel S. Isseks, 30 Broad Street, New York, New York. /s/ Alphonse A. Laporte, Alphonse A. Laporte, One Park Avenue, New York, New York, Attorneys for Respondents Commercial Investment Trust Corporation, et al.



[fol. 60] To: Alexander N. Campbell, United States Attorney for the Northern District of Indiana, South Bend, Indiana. Wendell Berge, Assistant Attorney General, Department of Justice, Washington D. C.

[fols. 61-118] Exhibit "A" Omitted. Printed side page 110 ante.

[fol. 119] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT IN SUPPORT OF MOTION TO SUSPEND PROVISIONS  
OF CONSENT DECREE ENTERED NOVEMBER 15, 1938—Filed  
May 4, 1946

UNITED STATES OF AMERICA  
SOUTHERN DISTRICT OF NEW YORK  
County of New York, ss.:

ALPHONSE A. LAPORTE, being duly sworn, does hereby make oath and deposes as follows:

I am Vice-President and General Counsel of Commercial Investment Trust Corporation, and I have read the attached motion to suspend certain provisions of the consent decree entered November 15, 1938, and am familiar with the facts therein set forth and the circumstances under which the aforesaid motion is filed.

WHEREFORE, I hereby make oath that the statements set forth therein are true to the best of my knowledge, information and belief. The sources of my information are the documents in the files of Commercial Investment Trust Corporation and facts which I have learned while an officer and general counsel of Commercial Investment Trust Corporation.

/s/ Alphonse A. Laporte

Subscribed and sworn to before me this 27th day of April, 1946. /s/ William J. Hegarty William J. Hegarty,  
30 Broad St., N. Y., N. Y. Attorney and Counsellor-at-Law. (Seal)

[fols. 120-121] [Title omitted]

Receipt is hereby acknowledged of service of notice requesting oral hearing of petition of Commercial Investment Trust Corporation, Commercial Investment Trust,

Inc., Universal Credit Corporation, Universal Credit Company of Delaware, Universal Credit Company of Indiana, and Universal Credit Company, Inc., filed in the above case; together with 2 copies of said petition and 2 copies of memorandum in support of same.

Dated at South Bend, Indiana, this 4th day of May, 1946.

Alexander M. Campbell, United States Attorney,  
by James E. Keating, Assistant United States  
Attorney.

[fol. 122] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF SUBMISSION—Filed June 22, 1946

PLEASE TAKE NOTICE that the attached proposed findings of fact and conclusions of law on the motion of Respondents, Commercial Investment Trust Corporation, et al., to suspend the provisions of the consent decree entered November 15, 1938, will be submitted to the Clerk of the District Court for signature by Hon. Patrick T. Stone, United States District Judge, on June 22, 1946.

Dated June 22, 1946.

Scheer, Scheer & Taylor, Scheer, Scheer & Taylor,  
408 Oddfellows Building, South Bend, Indiana.  
Samuel S. Isseks, Samuel S. Isseks, 30 Broad  
Street, New York 4, New York. Alphonse A.  
Laporte, Alphonse A. Laporte, One Park Avenue,  
New York, New York. Attorneys for Respond-  
ents Commercial Investment Trust Corporation,  
et al.

To: Hon. Alexander N. Campbell, United States Attorney for the Northern District of Indiana. Hon. Wendell Berge, Assistant Attorney General, Department of Justice, Washington, D. C. Crumpacker, May, Carlisle & Beamer, 811-812 J. M. S. Building, South Bend, Indiana. Clifford B. Longley, Esq., 1400 Buhl Building, Detroit, Michigan. Wallace R. Middleton, Esq., 1400 Buhl Building, Detroit, Michigan. Attorneys for Respondent Ford Motor Company.

[fol. 124]. IN UNITED STATES DISTRICT COURT

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW ON MOTION OF  
RESPONDENTS, COMMERCIAL INVESTMENT TRUST CORPORATION,  
ET AL., TO SUSPEND PROVISIONS OF CONSENT DECREE ENTERED  
NOVEMBER 15, 1938

### Findings of Fact

1. The Court has jurisdiction under paragraph 12a(4) and 12a(3)(1) to suspend the provisions of subparagraphs 6(i) and 6(k) until the restraints and requirements contained in such subparagraphs shall be imposed, in substantially identical terms, upon General Motors Corporation and its subsidiaries and to suspend the provisions of subparagraph 7(d) until the restraints and requirements contained in such subparagraph shall be imposed, in substantially identical terms, upon General Motors Acceptance Corporation and its subsidiaries, either (x) by consent decree, or (y) by a final decree of a court of competent jurisdiction not subject to further review, or (a) by decree of such court which, although subject to further review, continues effective, unless this Court finds that the Trial Court, in its instructions to the jury in the criminal case against General Motors Corporation which was tried in November, 1939, held that the acts or practices enjoined by such subparagraphs 6(i), 6(k) and 7(d) constituted a proper basis for the return of a general verdict of guilty.

2. No decree, whether by consent or otherwise, has been entered against General Motors Corporation and General Motors Acceptance Corporation, or their subsidiaries.

[fol. 125] 3. From the instructions of the Trial Court in the criminal case against General Motors Corporation, et al., a copy of which is attached to the Respondent Finance Companies' motion for suspension, and a certified copy of which was handed up to the Court on the argument, it does not appear that the Trial Court, in the criminal case against General Motors Corporation, General Motors Acceptance Corporation and others, in its instructions to the jury, held that any of the acts or

practices restrained by subparagraphs 6(i) and 7(d) of the consent decree filed in this cause on November 15, 1938, constituted a proper basis for the return of a general verdict of guilty.

4. From the instructions of the Trial Court in the criminal case against General Motors Corporation, et al., a copy of which is attached to the Respondent Finance Companies' motion for suspension, and a certified copy of which was handed up on the argument, it does not appear that the Trial Court, in the criminal case against General Motors Corporation, General Motors Acceptance Corporation and others, in its instructions to the jury, hold that any of the acts or practices restrained by subparagraph 6(k) of the consent decree filed in this cause on November 15, 1938, constituted a proper basis for the return of a general verdict of guilty.

5. At the time of the entry of the consent decree, and prior thereto, representatives of the Department of Justice advised the Respondents, the Court and the public, that Respondents would be at a competitive disadvantage as against General Motors Corporation and General Motors Acceptance Corporation if Respondents agreed to the consent decree filed herein on November 15, 1938, and similar relief, or the equivalent thereof, was not obtained by the Government against General Motors Corporation and General Motors Acceptance Corporation. The provisions of paragraph 12a of the consent decree were included in the consent decree so that the Respondents would be relieved from certain injunctive provisions if sub-[fol. 126] stantially similar injunctive provisions, or the equivalent thereof, were not obtained against General Motors Corporation and General Motors Acceptance Corporation.

6. No other manufacturer of automobiles (except Chrysler Corporation), no manufacturer of other products sold on installments, no finance company (except Commercial Credit Corporation), and no bank in this country engaged in financing installment sales of either automobiles or other products, is subject to prohibitions or injunctive provisions similar to those set forth in subparagraphs 6(i), 6(k) and 7(d) of the consent decree of November 15, 1938.



7. From the entry of the consent decree on November 15, 1938, to the early part of 1942, Respondent Finance Companies' business in financing Ford cars has diminished substantially.

8. Since the lifting of the restrictions on the manufacture of new cars after the termination of the war, Respondent Finance Companies have found themselves faced with new economic and competitive factors in connection with the financing of automobiles.

### Conclusions of Law

I. The Court has jurisdiction to pass on the motion of Respondent Finance Companies to suspend the provisions of subparagraphs 6(i), 6(k) and 7(d) of the consent decree of November 15, 1938, until substantially similar provisions are obtained by the Government in a decree against General Motors Corporation and General Motors Acceptance Corporation, and their subsidiaries.

II. Respondent Finance Companies' motion to have subparagraphs 6(i), 6(k) and 7(d) suspended, and subparagraph 6(e) modified (during the suspension of subparagraphs 6(i), 6(k), and 7(d) and only to the extent that subparagraph 6(e) now enjoins acts or practices prohibited by subparagraphs 6(i) and 6(k)), should be granted until the provisions of subparagraphs 6(i) and 6(k) of the consent decree entered November 15, 1938, in [fol. 127] this cause, shall be imposed, in substantially identical terms, upon General Motors Corporation and its subsidiaries and the provisions of subparagraph 7(d) shall be imposed, in substantially identical terms, upon General Motors Acceptance Corporation and its subsidiaries, either (x) by consent decree, or (y) by final decree of a court of competent jurisdiction not subject to further review, or (z) by decree of such Court which, although subject to further review, continues effective.

III. By the terms of paragraph 12(a)(3) of the consent decree of November 15, 1938, it is unnecessary for the Respondent Finance Companies to prove that the continuance of the restraints in subparagraphs 6(i), 6(k) and 7(d) against the Respondents will place Respondent Finance Companies at an economic disadvantage.

IV. If Respondent Finance Companies must show that the continuance of the restraints in subparagraphs 6(i), 6(k) and 7(d) will place Respondent Finance Companies at an economic disadvantage, then Respondent Finance Companies have made such a showing by reason of (a) the undisputed fact that at the time of the entry of the decree and prior thereto, representatives of the Government stated to the Respondents, the Court and the public, that the failure of the Government to obtain substantially similar relief against General Motors Corporation and General Motors Acceptance Corporation would place the Respondents at an economic disadvantage, and (b) the uncontradicted proof set forth in Respondent Finance Companies' moving papers under oath, (1) that subsequent to the entry of the decree and up to the early part of 1942, the Respondents' business in financing Ford cars diminished substantially; (2) that since the manufacture of new cars had been permitted, the Respondents have found themselves faced with new economic and competitive factors in connection with the financing of automobiles; and (3) that no other manufacturer of automobiles (except Chrysler Corporation), no manufacturer of other products sold on installments, no other finance company (except Commercial Credit Corporation), and no bank in [fol. 128] this country engaged in financing installment sales of automobiles, is subject to prohibitions or injunctive provisions similar to those set forth in subparagraphs 6(i), 6(k) and 7(d) of the consent decree of November 15, 1938.

— — —, U.S.D.J.

Dated, June —, 1946.

[fol. 129] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF PROPOSED ORDER—Filed June 22, 1946

PLEASE TAKE NOTICE that the proposed order granting the motion of the Respondents, Commercial Investment Trust Corporation, et al., to suspend subparagraphs 6(i), 6(k) and 7(d) of the consent decree entered November 15, 1938, will be submitted to the Clerk of the Court

for signature by Hon. Patrick T. Stone, United States District Judge, on June 22, 1946.

Dated, June 22, 1946.

Scheer, Scheer & Taylor, Scheer, Scheer & Taylor, 408 Oddfellows Building, South Bend, Indiana. Samuel S. Isseks, Samuel S. Isseks, 30 Broad Street, New York 4, New York. Alphonse A. Laporte, Alphonse A. Laporte, One Park Avenue, New York, New York. Attorneys for Respondents Commercial Investment Trust Corporation, et al.

To: Hon. Alexander N. Campbell, United States Attorney for the Northern District of Indiana. Hon. Wendell Berge, Assistant Attorney General, Department of Justice, Washington, D. C. Crumpacker, May, Carlisle & Beamer, 811-812 J. M. S. Building, South Bend, Indiana. Clifford B. Longley, Esq., 1400 Buhl Building, Detroit, Michigan. Wallace R. Middleton, Esq., 1400 Buhl Building, Detroit Michigan. Attorneys for Respondent Ford Motor Company.

[fol. 131] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING MOTION OF RESPONDENTS, COMMERCIAL INVESTMENT TRUST CORPORATION, ET AL., TO SUSPEND SUBPARAGRAPHS 6(i), 6(k) AND 7(d) OF CONSENT DECREE ENTERED NOVEMBER 15, 1938.

At a session of said Court, held in the Court House in the City of Hammond, State of Indiana, on the — day of June, A.D., 1946.

Present: Hon. Patrick T. Stone, United States District Judge.

The motion of Respondents Commercial Investment Trust Corporation, Commercial Investment Trust, Inc., Universal Credit Corporation, Universal Credit Company of Delaware, Universal Credit Company of Indiana, and Universal Credit Company, Inc., for the suspension of subparagraphs 6(i), 6(k) and 7(d) of the consent decree entered November 15, 1938, in this cause, having been

filed on May 4, 1946, in this Court on an application sworn to on April 27, 1946, by the Vice-President and General Counsel of Commercial Investment Trust Corporation, and such motion having come on to be heard and having been argued by counsel for the moving parties and by counsel for United States of America, it is hereby

Ordered, and adjudged, that said motion be, and the same hereby is, granted in all respects; and it is further

Ordered, that each of the provisions of subparagraphs 6(i) and 6(k) of the consent decree entered in this cause on November 15, 1938, be suspended until they shall be imposed, in substantially identical terms, upon General Motors Corporation and its subsidiaries, [fols. 132-133] and that the provisions of subparagraph 7(d) of such decree be suspended until they shall be imposed, in substantially identical terms, upon General Motors Acceptance Corporation, and its subsidiaries, either (x) by consent decree, or (y) by final decree of a court of competent jurisdiction not subject to further review, or (z) by decree of such Court which, although subject to further review, continues effective; and that each of the provisions of subparagraph 6(e) of such consent decree of November 15, 1938, be modified, during the suspension of subparagraphs 6(i), 6(k) and 7(d), to the extent, and only to the extent, that such subparagraph 6(e) now enjoins any of the acts or practices prohibited by subparagraphs 6(i) and 6(k).

— — —, U. S. D. J.

Dated, June —, 1946.

[fols. 134-140]. FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER Omitted. Printed side page. 208 ante.

[fol. 141] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed September 16, 1946

Now come petitioners, Commercial Investment Trust Corporation, Commercial Investment Trust, Inc., Universal Credit Corporation, Universal Credit Company of



Delaware, Universal Credit Company of Indiana, and Universal Credit Company, Inc., and considering themselves aggrieved by the Final Decree in Modification made and entered on July 25, 1946, in this Court in the above entitled cause, pray that an appeal be allowed to the Supreme Court of the United States. The particulars wherein said petitioners consider the Final Decree in Modification erroneous are set forth in their Assignment of Errors which is filed herewith.

Wherefore, your petitioners pray that an appeal may be allowed in their behalf to the Supreme Court of the United States for the correction of the errors so com-[fols. 142-143] plained of and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated, September 16, 1946.

Scheer, Scheer & Taylor, Scheer, Scheer & Taylor,  
408 Oddfellows Building, South Bend, Indiana.  
Samuel S. Isseks, Samuel S. Isseks, 30 Broad  
Street, New York, New York. Alphonse A. La-  
porte, Alphonse A. Laporte, One Park Avenue,  
New York, New York. Attorneys for Respond-  
ents, Commercial Investment Trust Corporation,  
et al.

Rec'd a copy of the above Sept. 20, 1946.

James E. Keating, Ass't U. S. Atty.

[fol. 144] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed September 16, 1946

Now come petitioners, Commercial Investment Trust Corporation, Commercial Investment Trust, Inc., Universal Credit Corporation, Universal Credit Company of Delaware, Universal Credit Company of Indiana, and Universal Credit Company, Inc., the appellants herein, and file the following assignment of errors upon which they will rely in the prosecution of the appeal herewith petitioned

for in said cause to the Supreme Court of the United States from the Final Decree in Modification of this Court entered on the 25th day of July, 1945.

The District Court erred:.

1. In not holding that the appellants may exercise the right expressly conceded by the United States under Paragraph 12a of the Consent Decree entered November 15, 1938, which provides that the appellants are entitled to a suspension of Paragraphs 6(i), 6(k) and 7(d) of said Consent Decree, and such parts of Paragraph 6(e) [fol. 145] of said Consent Decree as would be necessary to do the things now prohibited by said Paragraphs 6(i) and 6(k), until such time as the restraints and requirements contained in Paragraphs 6(i) and 6(k) shall be imposed, in substantially identical terms, upon General Motors Corporation and its subsidiaries, and until such time as the restraints and requirements contained in Paragraph 7(d) shall be imposed in substantially identical terms, upon General Motors Acceptance Corporation and its subsidiaries, either (a) by consent decree, or (b) by final decree of a court of competent jurisdiction not subject to further review, or (c) by a decree of such court which, although subject to further review, continues effective, or (d), by the equivalent of such a decree which is defined by said decree, as a determination of the illegality of such acts or practices by General Motors Corporation, held by the trial court, in its instructions to the jury in the criminal case against General Motors Corporation, to constitute a proper basis for the return of a general verdict of guilty.

2. In not finding that the trial court, in its instructions to the jury in the criminal case against General Motors Corporation, et al which was tried in November, 1939, did not hold that the agreements, acts or practices such as are enjoined by Paragraphs 6(i), 6(k) and 7(d) of the Consent Decree entered November 15, 1938, constituted a proper basis for the return of a general verdict of guilty.

[fol. 146] 3. In not finding that the trial court in its instructions to the jury in the criminal case against General Motors Corporation et al, which was tried in November, 1939, held that the agreements, acts or practices such

as are enjoined by Paragraphs 6(i), 6(k) and 7(d) of the Consent Decree entered November 15, 1938, were legal and proper.

4. In not finding that at the time of the entry of the Consent Decree on November 15, 1938, and prior thereto, representatives of the Department of Justice advised the appellants, the Court and the public, that the appellants would be at a competitive disadvantage with General Motors Acceptance Corporation and its subsidiaries if the appellants agreed to said Consent Decree, and similar relief, or the equivalent thereof, was not obtained by the Government against General Motors Acceptance Corporation and its subsidiaries.

5. In not finding that no decree, whether by consent or otherwise, has been entered against General Motors Corporation, or General Motors Acceptance Corporation, and their respective subsidiaries.

6. In not finding that the provisions of Paragraph 12a of the Consent Decree entered on November 15, 1938, were included in said Consent Decree for the purpose of relieving defendant Ford Motor Company from the injunctive provisions of Paragraphs 6(i) and 6(k) of said Consent Decree if substantially similar injunctive provisions, or the equivalent thereof, were not obtained [fol. 147] against General Motors Corporation and its subsidiaries; and for the purpose of relieving the appellants from the injunctive provisions of Paragraph 7(d) of said Consent Decree if substantially similar injunctive provisions, or the equivalent thereof, were not obtained against General Motors Acceptance Corporation, and its subsidiaries.

7. In not finding that no other manufacturer of automobiles (except Chrysler Corporation), no manufacturer of other products sold on installments, no finance company (except Commercial Credit Corporation), no bank in this country engaged in financing installment sales of either automobiles or other products, is subject to prohibitions or injunctive provisions similar to those set forth in Paragraph 6(i), 6(k) and 7(d) of the Consent Decree entered on November 15, 1938.

8. In not finding that from the date of the entry of the

Consent Decree on November 15, 1938, to the early part of 1942, the appellants' business in the financing of Ford automobiles had diminished substantially.

9. In not finding that since the lifting of the restrictions on the manufacture of new automobiles after the termination of the war, the appellants have been faced with new economic and competitive factors in connection with the financing of automobiles.

10. In not holding that by the terms of Paragraph 12a(3) of the Consent Decree entered on November 15, 1938, it is unnecessary for the appellants to prove that the continuance of the restraints contained in Paragraphs 6(i), 6(k) and 7(d) will place the appellants at an economic disadvantage.

[fol. 148] 11. In not holding that if the appellants must show that the continuance of the restraints contained in Paragraphs 6(i), 6(k) and 7(d) of the Consent Decree entered on November 15, 1938, will place the appellants at an economic disadvantage, then the appellants have made such a showing by reason of the prior statements made by representatives of the Department of Justice to the appellants, the Court and the public with respect to the economic effect of the said continued restraints on the appellants if the United States should fail to obtain similar relief against General Motors Corporation, General Motors Acceptance Corporation and their respective subsidiaries, and by the uncontradicted proof of such effect as set forth in the appellants' moving papers under oath for modification of the said Consent Decree filed on May 4, 1946.

12. In finding that the trial court in its instructions to the jury in the criminal case against General Motors Corporation et al which was tried in November, 1939, held that the agreements, acts or practices such as are enjoined by Paragraphs 6(i), 6(k) and 7(d) of the Consent Decree entered on November 15, 1938, constituted a proper basis for the return of a general verdict of guilty.

13. In finding that under Paragraph 12a(2) of the Consent Decree entered on November 15, 1938, the general



[fol. 149] verdict of guilty in the General Motors criminal case, under the instructions to the jury by the trial court, is equivalent to a decree restraining the performance by General Motors Corporation and its subsidiaries of such agreements, acts or practices as are enjoined by Paragraphs 6(i), 6(k) and 7(d) of said Consent Decree.

14. In finding that the prohibitions contained in Paragraphs 6(i), 6(k) and 7(d) of the Consent Decree entered on November 15, 1938, have been imposed in substantially identical terms upon General Motors Corporation and its subsidiaries as a result of the general verdict of guilty, under proper instructions from the trial court, in accordance with the provisions of Paragraph 12a(2) of said Consent Decree.

15. In finding that the provisions of Paragraphs 6(i), 6(k) and 7(d) of the Consent Decree entered on November 15, 1938, were to be suspended in the event of failure of the United States to secure a general verdict of guilty against General Motors Corporation and its subsidiaries.

16. In finding that the appellants are not laboring under any competitive disadvantage with General Motors Acceptance Corporation in the financing of Ford automobiles by virtue of the prohibitions of Paragraphs 6(i), 6(k) and 7(d) of the Consent Decree entered on November 15, 1938.

17. In finding that the appellants offered no evidence in support of their motion for modification filed May 4, 1946, showing competitive disadvantage.

[fol. 150] 18. In finding that the complainant has proceeded diligently and expeditiously in its civil suit against General Motors Corporation, which was begun in October, 1940, to require that corporation to divest itself of ownership of General Motors Acceptance Corporation.

19. In holding that under Paragraph 12a(2) of the Consent Decree entered on November 15, 1938, a general verdict of guilty against General Motors Corporation and its subsidiaries, under proper instructions to the jury by the trial court, must be considered the equivalent of

a decree against General Motors Corporation restraining the performance by General Motors Corporation of any agreements, acts or practices which the trial court, in its instructions to the jury, held was a violation of the Sherman Act.

20. In holding that under Paragraph 12a(3) of the Consent Decree entered on November 15, 1938, the restraints imposed by subparagraphs (d) to (f) and (h) to (l), inclusive, of Paragraph 6, and subparagraphs (a), (c) and (d) of Paragraph 7, are not subject to suspension provided the equivalent of a decree, as set out in Paragraph 12a(2), is secured against General Motors Corporation.

21. In denying the appellants' motion under Paragraph 12a of the Consent Decree, entered November 15, 1938, to suspend the provisions of Paragraphs 6(i), 6(k) and 7(d) and such parts of Paragraph 6(e) as would be [fol. 151] necessary to do the things now prohibited by Paragraphs 6(i) and 6(k) until such time as the restraints and requirements contained in Paragraphs 6(i) and 6(k) shall be imposed, in substantially identical terms, upon General Motors Corporation and its subsidiaries, and until such time as the restraints and requirements contained in Paragraph 7(d) shall be imposed, in substantially identical terms, upon General Motors Acceptance Corporation, and its subsidiaries, either (1) by consent decree, or (2) by final decree of a court of competent jurisdiction not subject to further review, or (3) by decree of such court which, although subject to further review, continues effective.

#### PRAYER FOR REVERSAL

For which errors the Respondents, Commercial Investment Trust Corporation, Commercial Investment Trust, Inc., Universal Credit Corporation, Universal Credit Company of Delaware, Universal Credit Company of Indiana, and Universal Credit Company, Inc., pray that the said decree of the District Court of the United States for the Northern District of Indiana, entered July 25, 1946, in the above entitled cause, be reversed, that the respondents' petition be allowed; that the amount of the cost bond

to be given by appellants be fixed; that citation be issued to the appellee named above; and for such other and further relief to which appellants may be entitled.

Respectfully submitted, Scheer, Scheer & Taylor, Scheer, Scheer & Taylor, 408 Oddfellows Building, [fols. 152-311]ing, South Bend, Indiana. Samuel S. Isseks, Samuel S. Isseks, 30 Broad Street, New York 4, New York. Alphonse A. Laporte, Alphonse A. Laporte, One Park Avenue, New York, New York. Attorneys for Appellants, Commercial Investment Trust Corporation, et al.

Rec'd a copy of the foregoing Sept. 20, 1946.

James E. Keating, Asst. U. S. Atty.

[fol. 312] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Filed September 19, 1946

The appellants in the above entitled case and each of them, have prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the decree made and entered in the above entitled cause by the District Court of the United States for the Northern District of Indiana on the twenty-fifth day of July, 1946, and have presented and filed their petition for appeal, assignment of errors, prayer for reversal and statement as to jurisdiction pursuant to the statutes of the United States and the Rules of the Supreme Court of the United States in such cases made and provided:

It is now ordered that an appeal be and the same is hereby allowed to the Supreme Court of the United States from the District Court of the United States for the Northern District of Indiana in the above entitled cause as provided by law, and

[fols. 313-314] It is further ordered that the clerk of the United States District Court for the Northern District of Indiana shall prepare and certify a transcript of the record, assignment of errors and decree in this cause and transmit the same to the Supreme Court of the United

States so that he shall have the same in said Court within forty (40) days of this date, and

It is further ordered that security for costs on appeal be fixed in the sum of Five Hundred (\$500.00) Dollars.

Dated, September 18, 1946.

s/ Patrick T. Stone, United States District Judge  
for the Northern District of Indiana.

Rec'd a copy of the above Sept. 20, 1946.

James E. Keating, Ass't U. S. Atty.

[fol. 315] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPUE FOR TRANSCRIPT OF RECORD—Filed September 19,  
1946

To: Clerk, United States District Court for the Northern  
District of Indiana.

Sir:

You Are Hereby Requested to make a transcript of record to be filed in the Supreme Court of the United States, pursuant to an appeal allowed in the above entitled cause and to include in such transcript of record the following, and no other, papers, to wit:

1. Complaint, filed herein on November 7, 1938;
2. Answer of respondents Commercial Investment Trust Corporation, Commercial Investment Trust, Inc., Universal Credit Corporation, Universal Credit Company of Delaware, Universal Credit Company of Indiana and Universal Credit Company, Inc., to said complaint, together with acknowledgment of service on November 7, 1938;
3. Final Decree herein dated November 15, 1938;
4. Notice of motion by respondents Commercial Investment Trust Corporation, Commercial Investment Trust, Inc., Universal Credit Corporation, Universal Credit Company of Delaware, Universal Credit Company of



Indiana and Universal Credit Company, Inc., dated [fol. 316] May 4, 1946;

5. Motion of respondents Commercial Investment Trust Corporation, Commercial Investment Trust, Inc., Universal Credit Corporation, Universal Credit Company of Delaware, Universal Credit Company of Indiana and Universal Credit Company, Inc., to suspend provisions of Consent Decree of November 15, 1938 together with copy of instructions of trial court to jury in General Motors criminal case filed therewith entered herein May 4, 1946;

6. Affidavit in support of motion to suspend provisions of Consent Decree of November 15, 1938, entered herein on May 4, 1946;

7. Notice of submission of proposed findings of fact and conclusions of law, and proposed findings of fact and conclusions of law, by respondents Commercial Investment Trust Corporation, Commercial Investment Trust, Inc., Universal Credit Corporation, Universal Credit Company of Delaware, Universal Credit Company of Indiana and Universal Credit Company, Inc., entered herein on June 22, 1946;

8. Notice of proposed order, and proposed order, granting motion of respondents Commercial Investment Trust Corporation, Commercial Investment Trust, Inc., Universal Credit Corporation, Universal Credit Company of Delaware, Universal Credit Company of Indiana and Universal Credit Company, Inc., to suspend provisions of Consent Decree of November 15, 1938, entered herein on June 22, 1946;

[fol. 317] 9. Complainant's notice of submission of proposed findings of fact, conclusions of law, and order dated July 2, 1946;

10. Findings of Fact, Conclusions of Law, and Order of District Court, dated and entered herein on July 25, 1946;

11. Petition for appeal by respondents Commercial Investment Trust Corporation, Commercial Investment Trust, Inc., Universal Credit Corporation, Universal Credit Company of Delaware, Universal Credit Company of Indiana

and Universal Credit Company, Inc., filed herein on September 16, 1946;

12. Assignment of errors accompanying said petition for appeal filed herein on September 16, 1946;

13. Statement as to jurisdiction of Supreme Court of the United States accompanying said petition for appeal filed herein on September 16, 1946;

14. Order allowing said appeal and fixing the amount of the bond on appeal filed herein on September 19, 1946;

15. The appeal bond filed herein on September 19, 1946; and approved on September 18, 1946;

16. Citation issued to the United States filed herein on September 19, 1946;

17. Notice of Allowance of Appeal, enclosing the appeal papers herein, and statement directing attention to the provisions of paragraph 3 of Rule No. 12 of the Rules of the Supreme Court of the United States, entered herein on September 18, 1946;

18. Affidavits of service of appeal papers, together with acknowledgment of service thereof, filed herein on September 20, 1946;

19. This praecipe and acknowledgment of service thereof.

[fols. 318-319] Said praecipe to be prepared as required by law and the rules of this court and to be filed in the office of the clerk of the Supreme Court of the United States in accordance with the Rules of the Supreme Court of the United States.

Dated, September 14, 1946.

Scheer, Scheer & Taylor, Scheer, Scheer & Taylor, 408 Oddfellows Building, South Bend, Indiana. Samuel S. Isseks, Samuel S. Isseks, 30 Broad Street, New York 4, New York. Alphonse A. Laporte, Alphonse A. Laporte, One Park Avenue, New York, New York. Attorneys for Appellants.

Service of copies of the foregoing Praecipe is acknowledged, this 20 day of Sept., 1946.

James E. Keating, U. S. Atty., United States of America.

[Fols. 320-329] Bond on appeal for \$500.00 approved and filed Sept. 19, 1946 omitted in printing.

[Fols. 330-336 omitted in printing.]

[fols. 337-338] IN UNITED STATES DISTRICT COURT

ACKNOWLEDGEMENT OF SERVICE—Filed September 20, 1946

The Undersigned attorney for the United States of America hereby acknowledges receipt of the following: Original Citation; Original Notice, Copy of Petition for Appeal, Copy of Assignment of Errors, Copy of Statement as Jurisdiction, Copy of order allowing appeal and Copy of Appeal Bond in behalf of the appellants praying for an appeal to the Supreme Court of the United States from a final decree and modification made and entered on July 25th, 1946, in the District Court of the United States for the Northern District of Indiana, South Bend Division.

Dated at South Bend, Indiana, this 20th day of September, 1946.

Alexander M. Campbell, United States Attorney for  
the Northern District of Indiana, by James E.  
Keating, Asst. U. S. Attorney.

[fol. 339] IN UNITED STATES DISTRICT COURT

[Title omitted]

PROOF OF SERVICE—Filed September 30, 1946

Service of a copy of the following papers in the above entitled action is hereby acknowledged this 23rd day of September, 1946:

(1) Petition of Commercial Investment Trust Corporation, Commercial Investment Trust, Inc., Universal Credit Corporation, Universal Credit Company of Delaware, Universal Credit Company of Indiana and Universal Credit Company, Inc., for appeal to the Supreme Court of the United States from the Final Decree of the District Court of the United States for the Northern District of Indiana, South Bend Division, entered July 25, 1946;

(2) Assignment of Errors and Prayer for Reversal;

(3) Statement as to Jurisdiction;

(4) Order Allowing Appeal;

(5) Citation;

(6) Undertaking for Costs; and

(7) Notice of Filing required by Rule 12(2) of the Rules of the Supreme Court.

s/ Wendell Berge for United States of America.

[fol. 340] STATE OF NEW YORK

County of New York, ss.:

Joseph A. McManus, being duly sworn, deposes and says:

I am an attorney associated with and practicing law in the offices of Samuel S. Isseks, 30 Broad Street, New York, N. Y. one of the attorneys of record for appellants Commercial Investment Trust Corporation, Commercial Investment Trust, Inc., Universal Credit Corporation, Universal Credit Company of Delaware, Universal Credit Company of Indiana and Universal Credit Company, Inc.

On the 23rd day of September, 1946, I served, pursuant to paragraph 2 of Rule 12 of the Revised Rules of the Supreme Court of the United States, copies of the said appellants' Notice, Petition for Appeal, Assignment of Errors and Prayer for Reversal, Statement as to Jurisdiction, Order Allowing Appeal, Bond and Citation on Appeal, upon the appellee herein, by delivering to and leaving personally with Hon. Wendell Berge, Assistant Attorney General of the United States, at his office, Constitution Avenue and Tenth Street, N.W., Washington, D. C., a true copy of each thereof.

I further know the aforesaid Hon. Wendell Berge to be the aforesaid Assistant Attorney General of the United States and he represented himself as authorized to accept such service on behalf of the United States of America.

Joseph A. McManus

Subscribed and sworn to before me this 23rd day of September, 1946. William J. Hegarty, William J. Hegarty, 30 Broad St., N. Y., N. Y. Attorney and Counsellor-at-Law.

[fols. 341-342] And now at the request of Edward Scheer, Attorney for Commercial Investment Company, the praecipe for record of transcript on appeal is refiled as of this date, (September 30, 1946).



## IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE—Filed October 4, 1946

To: United States District Attorney, Northern District of Indiana.

You are hereby notified that the defendants in the above cause, the Commercial Investment Trust Corporation, Commercial Investment Trust, Inc., Universal Credit Corporation, Universal Credit Company of Delaware, Universal Credit Company of Indiana and Universal Credit Company, Inc. have re-filed their Praecipe in the above Court on September 30th, 1946, which said Praecipe is in the same form as that of which copies were served upon you on September 20th, 1946.

Scheer and Scheer and Taylor, by Edward O. Scheer.

## Acknowledgement

I hereby acknowledge service of the above notice this 4th day of October, 1946.

James E. Keating, Asst. United States Attorney for the Northern District of Indiana, by Marie M. Schultz.

[fol. 343] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME—Filed September 19, 1946

It appearing to the Court that an appeal is pending in the above entitled cause to the United States Supreme Court, that the forty (40) day period allowed by Rule 10(2) of the Rules of the Supreme Court of the United States, will expire on October 28th, 1946, and for good cause shown to the Court,

It is hereby ordered by the Court, that the time within which the transcript of record in this cause shall be filed with the Clerk of the United States Supreme Court be and the same hereby is extended and enlarged thirty (30) days from and after the 28th day of October, 1946.

Dated this 19th day of October, 1946.

Patrick T. Stone, Judge, United States District Court.

[fol. 344]

## CLERK'S CERTIFICATE

UNITED STATES OF AMERICA,

Northern District of Indiana, ss:

Clerk's Certificate to foregoing transcript omitted in printing.

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[fol. 345] IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

Docket No. 643

STATEMENT OF POINTS TO BE RELIED ON AND DESIGNATION  
OF THE PARTS OF THE RECORD TO BE PRINTED—Filed  
November 6, 1946

Ford Motor Company, Appellant in the above entitled proceeding, intends to rely therein on each point set forth in its assignment of errors.

Said Appellant represents that it is necessary for the consideration of this cause that all of the record filed in this court by said Appellant be printed, in accordance with the stipulation covering the printing of record in this proceeding and in No. 644, filed concurrently herewith.

Dated at Detroit, Michigan this 1st day of November, 1946.

Clifford B. Longley, Clifford B. Longley, Wallace R. Middleton, Wallace R. Middleton, Attorneys  
for Ford Motor Company, 1400 Buhl Building,  
Detroit, Michigan.

Undersigned counsel for the United States of America, Appellee herein, hereby accepts and acknowledges service of copy of the foregoing statement of points to be relied upon and designation of the parts of the record to be printed.

November 6, 1946.

George T. Washington—M. F., Acting Solicitor  
General, Attorney for Appellee, United States  
of America.

[fol. 345a] [File endorsement omitted.]

[fol. 346] IN THE SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1946

No. 644

STATEMENT OF POINTS TO BE RELIED ON AND DESIGNATION  
OF THE PARTS OF THE RECORD TO BE PRINTED—Filed  
November 6, 1946

Now come the appellants in the above-entitled proceeding, and for their statement of points relied upon adopt their assignments of errors.

Said appellants represent that it is necessary for the consideration of this cause that all of the record filed in this Court by said appellants be printed, in accordance with the stipulation covering the printing of record in this proceeding and in No. 643, filed concurrently herewith.

Dated at New York, N. Y., this 4th day of November, 1946.

Samuel S. Isseks, Samuel S. Isseks, Attorney for  
Commercial Investment Trust Corporation, and  
others, 30 Broad Street, New York, N. Y.

Undersigned counsel for the United States of America, Appellee herein, hereby accepts and acknowledges service of copy of the foregoing statement of points to be relied upon and designation of the parts of the record to be printed.

November 6, 1946.

George T. Washington—M. F., Acting Solicitor  
General, Attorney for Appellee, United States  
of America.

[fol. 346a] [File endorsement omitted.]

[fol. 347] IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 643 and 644

STIPULATION AS TO RECORD—Filed November 6, 1946

IT IS HEREBY STIPULATED by and between the Appellant,  
Ford Motor Company, by its attorneys, Clifford B. Long-

ley and Wallace R. Middleton, by the Appellants, Commercial Investment Trust Company, Commercial Investment Trust, Inc., Universal Credit Corporation, Universal Credit Company of Delaware, Universal Credit Company of Indiana and Universal Credit Company, Inc., by their attorney, Samuel S. Isseks, and the United States of America, by its attorney, Holmes Baldridge, that in the above entitled appeals only one record need be printed, including therein all of the papers contained in each of the two separate records but deleting therefrom the following parts of the record in No. 644 which duplicate the record in No. 643:

Complaint of United States of America, filed November 7, 1938 .....	Page 2
Final Decree entered November 15, 1938.....	Page 21
Order of appointment of Patrick T. Stone, Judge .....	Page 47
Instructions of Trial Court to Jury in U. S. v. General Motors Corp., et al. ....	Page 61
Findings of Fact, Conclusions of Law, and Order entered July 25, 1946.....	Page 133
Dated at Washington, D.C. this 6th day of November, 1946.	

Clifford B. Longley, Wallace R. Middleton, Attorneys for Appellant, Ford Motor Company.  
 Samuel S. Isseks, Attorney for Appellants, Commercial Investment Trust Corporation, et al.  
 Holmes Baldridge, Attorney for Appellee, United States of America.

[fol. 348] SUPREME COURT OF THE UNITED STATES

No. 643, October Term 1946

ORDER NOTING PROBABLE JURISDICTION—November 12, 1946

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Mr. Justice Jackson took no part in the consideration or decision of this question.



[fol. 349] SUPREME COURT OF THE UNITED STATES

No. 644, October Term, 1946

ORDER NOTING PROBABLE JURISDICTION—November 12, 1946

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Mr. Justice Jackson took no part in the consideration or decision of this question.

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Endorsed: File No. 51,508 Northern Indiana, D. C. U. S., Term No. 644, Commercial Investment Trust Corporation, Commercial Investment Trust, Inc., Universal Credit Corporation, et al., Appellants, vs. The United States of America. Filed October 25, 1946. Term No. 644 O.T. 1946.

Endorsed: File No. 51,507 Northern Indiana, D. C. U. S., Term No. 643, Ford Motor Company, Appellant, vs. The United States of America. Filed October 25, 1946. Term No. 643 O.T. 1946.

(8346)

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**FILED**

**OCT 25 1946**

**CHARLES ELMORE GOSPEY**  
**CLERK**

**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1946** 7

**No. 643** //

**FORD MOTOR COMPANY,**

*Appellant*

**vs.**

**THE UNITED STATES OF AMERICA**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE NORTHERN DISTRICT OF INDIANA**

**STATEMENT AS TO JURISDICTION**

**CLIFFORD B. LONGLEY,**  
**WALLACE R. MIDDLETON,**  
*Counsel for Appellant.*



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## TABLE OF CASES CITED

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Section 15	2
Title 28, Section 345	1



**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1946**

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**No. 643**

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**FORD MOTOR COMPANY, A DELAWARE CORPORATION,**

*Appellant*

*vs.*

**UNITED STATES OF AMERICA,**

*Appellee*

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**STATEMENT OF BASIS ON WHICH APPELLANT  
CONTENDS THE SUPREME COURT OF THE  
UNITED STATES HAS JURISDICTION TO REVIEW  
ON APPEAL THE ORDER APPEALED FROM, AS  
REQUIRED BY SUPREME COURT RULE 12**

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Pursuant to Supreme Court Rule 12, paragraph 1, Ford Motor Company, the above appellant, files this, its statement particularly disclosing the basis on which said appellant contends that the Supreme Court has appellate jurisdiction to review on appeal the order appealed from herein, as follows:

I. The statutes believed to sustain appellate jurisdiction are:

A. Section 345 of Title 28 of the United States Code which provides, so far as is material here, that "a direct review

by the Supreme Court of an interlocutory or final judgment or decree of a District Court may be had where it is so provided in the following sections or parts of sections and not otherwise: (1) Section 29 of Title 15," \* \* \*

B. Section 29 of Title 15 of the United States Code which provides, so far as is material here, that "In every suit in equity brought in any District Court of the United States under Sections 1-7, Title 15 U. S. C., wherein the United States is complainant, an appeal from the final decree of the District Court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof:" \* \* \*

II. The order appealed from was dated and entered on the 25th day of July, 1946.

III. The application for an appeal was presented on the 17th day of September, 1946.

IV. Statement showing that the nature of the case and of the rulings of the court were such as to bring the case within the jurisdictional provisions relied on.

The case is a suit in equity brought in the District Court for the Northern District of Indiana under Sections 1-7, Title 15 U. S. C., wherein the United States is complainant, and the order appealed from is a final order as appears below.

In 1938, separate indictments were returned against appellant and General Motors Corporation charging that each conspired with certain finance companies to restrain trade and commerce in the wholesale and retail sale and financing of its automobiles in violation of the Sherman Act (15 U. S. C. Sec. 1).

General Motors stood trial under its indictment, but appellant consented to the entry of a decree enjoining certain

practices complained of and the indictment against it was quashed. The injunction against such practices was contained in paragraphs 6 and 7 of the decree and prohibited specific practices tending to influence dealers in their selection of finance companies.

Paragraph 12 of the decree enjoined appellant from purchasing the securities of a finance company. This was an ancillary matter not directly involved in the indictment.

The decree provided in paragraph 12a that, if a general verdict of guilty were returned against General Motors, such of the restraints imposed by paragraphs 6 and 7 as were not imposed in substantially identical terms on General Motors by that verdict should be suspended, and that the instructions of the trial court in that case should be used to determine what restraints the verdict imposed. A general verdict of guilty was returned against General Motors. The motion of appellant sought suspension of certain of these restraints on the ground that they were not imposed in substantially identical terms on General Motors by that verdict under the instructions given. One part of the order appealed from denied this motion and was therefore a final determination that appellant is not entitled to relief under paragraph 12a of the decree.

The decree in paragraph 12 contemplated a future civil action against General Motors and provided that the restraint in such paragraph against purchase of the securities of a finance company would terminate on January 1, 1941, if on or before that date the Government had not in such action obtained a final decree not subject to further review requiring General Motors Corporation to divest itself of General Motors Acceptance Corporation and provided for the entry, on application of appellant, of an order evidencing such termination. This date was extended from year to year by consent of the parties until it now

reads January 1, 1946. No final decree has been entered requiring General Motors to divest itself of General Motors Acceptance Corporation and appellant has not consented to any further extension. The other part of the order appealed from denied appellant's motion for the entry of an order evidencing the termination of this restraint and granted the Government's motion for an extension of the date from January 1, 1946, to January 1, 1947. This aspect of the order is final because it denies to appellant a right conferred on it by the decree, amends the decree and constitutes a final determination of the basis on which such an amendment can be made or denied.

It is submitted, therefore, that all jurisdictional requirements of the statutes relied upon are met and that appeal will lie to and only to the Supreme Court.

The cases believed to sustain the jurisdiction are as follows:

*Swift & Company v. United States*, 276 U. S. 311;

*Chrysler Corporation v. United States*, 316 U. S. 556.

**V. The grounds upon which it is contended that the questions involved are substantial.**

The Government desired to prevent the three largest automobile companies, General Motors, Chrysler and appellant, from influencing dealers in their selection of finance companies either by conduct claimed to amount to discrimination between dealers and finance companies for this purpose or by the mere ownership of finance companies. The above mentioned indictments and a similar indictment against Chrysler were based on charges of such acts of discrimination. The prevention of ownership of finance companies was to be accomplished by civil action.



These three companies manufactured about ninety per cent of all cars sold and the competition of each of them with the others was aggressive.

The influence of the manufacturer on the financing arrangements of its dealers was an important weapon in this competitive battle. About sixty per cent of all retail sales were financed. A larger percentage of wholesale sales were financed. The finance charges became a part of the cost to the purchaser. The lower the charges and the more lenient the terms of repayment, the greater was the market for cars. The more reasonable the collection practices of the finance company chosen by the dealer, the greater was the good will of the manufacturer, under whose trade mark the dealer was given a franchise to operate. The more liberal the wholesale financing of the dealer organization, the larger were the dealers' operations. The experience of the manufacturers had been that, in the absence of their influence in these financing arrangements, independent lending institutions, motivated by desire for profit from and safety in their investments rather than by desire to increase car sales and manufacturers' profit, would not by competition between themselves achieve the same results.

Because of this situation the changes contemplated by the Government had to be imposed on all three manufacturers to substantially the same extent and at nearly the same time. Otherwise any benefit that might inure to the public from the changes would be nullified by the injury that might result to the public from the disturbance of the equality of competitive conditions as between the manufacturers.

This would have been simple had all three manufacturers consented to a decree, but a problem arose when General Motors (manufacturing 47% of all cars sold) refused to consent to a decree while Chrysler and Ford (manufacturing 24% and 19% respectively) were willing to do so.

At that time there were no Sherman Law precedents in the automobile financing field. Whether or not the various restraints in the proposed consent decree went beyond the Sherman Act were undecided questions, but the General Motors refusal promised litigation and precedents settling some or all of those questions. The General Motors refusal also suggested that Ford and Chrysler might be forever restrained from doing things which their main competitor would be free to do. In order to reserve those undecided questions and protect Ford and Chrysler from competitive disadvantage with General Motors it was necessary that the consent decrees adjust themselves to the progress of the General Motors litigation. Hence, the suspension provisions of paragraph 12a of the decree and the termination provisions of paragraph 12.

We will proceed first to discuss the part of the order appealed from denying suspension under paragraph 12a of certain specific restraints in paragraphs 6 and 7 against acts of claimed discrimination between dealers and finance companies.

Unless the trial court in the General Motors criminal case instructed the jury that it was illegal to recommend, endorse or advertise a finance company or arrange with a finance company representative to visit a dealer, then appellant was entitled by the terms of the decree to have restrictions of that character suspended. Appellant moved for such suspensions, claiming that there were no such instructions and pointing out that, on the contrary, the trial court affirmatively instructed that it was not wrong for General Motors to have a finance company or recommend its use or explain the character of its operations, point out its advantages, persuade the dealers to use it, or even argue with dealers that it should be used.

The lower court finds that according to the instructions in the General Motors case it was illegal to recommend, endorse, advertise, or arrange for visits, all as enjoined by paragraphs 6(e), 6(i), 6(k) and 7(d) of the decree. •

If the lower court has misconstrued the instructions in the General Motors case, then General Motors is as free to perform such acts as it would have been had there never been an indictment, while appellant is permanently enjoined. Thus there is left in the hands of General Motors a competitive weapon denied to its main competitors, which tends, contrary to the public interest, to create a monopoly in restraint of trade.

Appellant claims that none of these acts are in violation of the Sherman Act, and, hence, that it would be impossible for the Government or appellant to impose those restrictions on General Motors. If this be true, this condition of competitive inequality in favor of General Motors, like the order that creates it, is permanent. If this be untrue, while the Government or appellant might by civil action seek to impose those restrictions on General Motors, appellant would have no assurance that the Government would proceed or that the outcome of such litigation would restore competitive equality.

The provisions of paragraph 12a of the decree were framed to meet just this situation. They provided for the suspension of those restraints but only for the period during which they were not imposed on General Motors. Therefore, if the Government claims that any of the acts restrained are illegal notwithstanding the failure of the trial court in the General Motors criminal case so to instruct the jury, it is entirely free to proceed in a contested civil action or by consent decree to impose such restraints on General Motors and, if successful, these restraints would

again become operative against appellant. In the meantime, competitive equality would not have been sacrificed.

Now we will discuss the part of the order appealed from denying termination of the restraint against acquisition of a finance company. The effect of this part of the order is to make it possible that restraints may be permanently imposed on appellant which may not be imposed on General Motors Corporation. Even if General Motors in the Government's civil action against it is required by decree to divest itself of General Motors Acceptance Corporation, it is not known what restraints that decree will contain with reference to future acquisition of a finance company by General Motors. If the General Motors case decides that investment by an automobile manufacturer in a finance company is *per se* unlawful, then that case will by *stare decisis* preclude investment by appellant in a finance company regardless of the lifting of the restraint in this decree. But if the General Motors case is decided on some other basis allowing investment in a finance company under certain circumstances, as for example that it will be allowed to acquire a new finance company but not be allowed to continue ownership of a finance company developed as a result of the practices for which it was convicted in the criminal case and thus retain the fruits of such practices and enjoy the continuing effect of such practices, then such decree will not establish the illegality *per se* of ownership of a finance company. In that case appellant should be entitled to the benefits of the decree it agreed to and not be permanently restrained from doing something that might be lawful for General Motors to do. There is no provision in paragraph 12 of this decree for the subsequent modification of the injunction against acquisition of securities of a finance company, if that injunction is made final by a decision adverse to General Motors in that case, to correspond to the



decision in that case. Hence the lower court's modification of paragraph 12 without the consent of appellant does not serve to effectuate the basic purposes of the decree.

The situation has some similarities to *Chrysler Corporation v. United States* (supra), a case involving an identical paragraph in the Chrysler consent decree. Chrysler refused to consent to the extension of its termination date beyond January 1, 1941. This court, although it considered four years a "markedly generous" time for the Government to obtain a decree requiring General Motors Corporation to divest itself of General Motors Acceptance Corporation, sustained the lower court's finding that the time was not unreasonable under the circumstances then existing. Taking judicial notice of the fact that no automobiles were being manufactured, this court held that it was not improper to extend the termination date to January 1, 1943, in the absence of a showing by Chrysler of why it needed a finance company affiliate during the war. During the war appellant consented to extending its termination date, but now, with the resumption of automobile manufacture, it resists extension of that date beyond January 1, 1946. If four years to conclude a case was a "markedly generous" allowance, it seems improbable that any circumstances could have existed which would have made it reasonable not to obtain such a decree by January 1, 1946, a period of more than seven years. The district court did not have before it any evidence of any circumstances which would have been sufficient to indicate that any such long period was reasonable, and therefore its finding of diligence by the Government and its extension of the period for obtaining such a decree to January 1, 1947, was not reasonable. Furthermore, although we claim that the apparent shifting of the burden of proof to Chrysler in that case was due to the court's taking judicial notice of the fact that no automobiles were being produced during the war and not due to a change in the

fundamental rule that parties moving to modify a consent decree have the burden of proof, appellant did file affidavits showing material competitive disadvantage as a result of its inability to own a finance company. No contrary evidence was furnished by the Government and the District Court's finding that appellant offered no such evidence appears erroneous.

It is, therefore, respectfully submitted that this court has jurisdiction of this appeal and that the questions involved are substantial.

The District Court did not deliver any opinion.

Dated September 17, 1946.

(Sgd.) CLIFFORD B. LONGLEY,

(Sgd.) WALLACE R. MIDDLETON,  
*Attorneys for Appellant, Ford Motor  
Company.*

**APPENDIX****FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

At a session of said Court, held in the Court House in the City of Hammond, State of Indiana, on the 10th day of June, A. D. 1946.

Present and Presiding: The Honorable Patrick T. Stone, District Judge.

The United States has moved that this Court extend the period provided in paragraph 12 of the consent decree entered in this cause on November 15, 1938 beyond January 1, 1946, the date to which it was previously extended by consent of the parties, and respondent Ford Motor Company has opposed this motion and in turn moved that this Court enter an order pursuant to paragraph 12 that nothing in said consent decree shall preclude said respondent from acquiring and retaining ownership of, control over or interest in any finance company, or from dealing with such finance company and with said respondent's dealers in the manner provided in said decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a thereof. In addition, respondent Ford Motor Company has moved pursuant to paragraph 12a of said decree that the provisions of subparagraphs (i) and (k) of paragraph 6 of said decree be suspended until similar provisions are imposed upon General Motors Corporation and that subparagraph (e) of said paragraph 6 be modified to the extent necessary to permit said respondent to do those things prohibited by said subparagraphs (i) and (k) which might also be prohibited by said subparagraph (e) such modification to continue until provisions similar to said subparagraph (e) without such modification are imposed on General Motors Corporation. Also, all respondent finance companies have moved for suspension of subparagraph (d) of paragraph 7 of said decree until a similar provision is imposed upon General Motors Acceptance Corporation.

All of said motions have been heard upon affidavits and arguments of counsel in open court, the complainant appearing by Wendell Berge, Esq. Assistant Attorney General,

Holmes Baldridge, Esq. Special Assistant to the Attorney General, Alexander M. Campbell, Esq. United States Attorney for the Northern District of Indiana, the respondent Ford Motor Company appearing by Clifford B. Longley, Esq. Wallace R. Middleton, Esq., Frederick C. Nash, Esq., and Messrs. Crumpacker, May, Carlisle & Beamer, and the respondents, Commercial Investment Trust Corporation, et al., appearing by Samuel S. Isseks, Esq., Alphonse A. La Porte, Esq. and Messrs. Scheer, Scheer and Taylor, and Russell Hardy, Esq. having, with the permission of the Court, filed a brief amicus curiae, and the Court, having considered the proofs, the arguments of counsel, and the briefs filed, and being fully advised in the premises, makes the following Findings of Fact and Conclusions of Law;

#### FINDINGS OF FACT

1. That the purpose of the second unnumbered paragraph of paragraph 12 of said decree was not only to protect respondent, Ford Motor Company, from the competitive disadvantage that might result from the continued ownership of General Motors Acceptance Corporation by General Motors Corporation if the civil suit of The United States against General Motors Corporation to require it to divest itself of General Motors Acceptance Corporation was delayed, but also to give respondent, Ford Motor Company, an opportunity to defend itself on the question of affiliation after the time limit set forth in such paragraph had expired.

2. That the suit instituted by the United States against General Motors Corporation to require that corporation to divest itself of ownership of General Motors Acceptance Corporation is still pending in the United States District Court at Chicago, Illinois, and has not been reached for trial. However, the plaintiff has proceeded diligently and expeditiously in its said suit.

3. That jurisdiction of this action was specifically retained in this Court for the purpose of requiring compliance with the terms of the decree, or for the purpose of modifying the decree upon proper showing.



4. That this Court has jurisdiction to hear and dispose of the subject matter of complainant's motion and of respondents motions.

5. That certain provisions of Paragraphs 6 and 7 of the decree herein were to be suspended in the event of failure of complainant to secure general verdicts of guilty against General Motors Corporation, General Motors Acceptance Corporation and others in a then pending criminal antitrust proceeding by January 1, 1940.

6. That the Court takes judicial notice of the fact that general verdicts of guilty were obtained against General Motors Corporation, General Motors Acceptance Corporation and others on November 17, 1939, and that such general verdicts were sustained on appeal.

7. That the trial court in its instructions to the Jury in the criminal antitrust proceedings against General Motors Corporation, et al., held that the agreements, acts, and practices enjoined in Paragraphs 6 (i), 6 (k) and 7 (d) of the Ford decree herein, among others, constituted a proper basis for the return of a general verdict of guilty.

8. That under Paragraph 12a (2) of the decree herein, the general verdict of guilty in the General Motors case, under the instructions to the jury by the trial court, is equivalent to a decree restraining the performance by General Motors Corporation of such agreement, acts, or practices as are enjoined herein by paragraphs 6 (i), 6(k) and 7 (d) and other paragraphs of the decree.

9. That the prohibitions contained in Paragraphs 6 (i), 6 (k) and 7 (d) of the decree herein have been imposed in substantially identical terms upon General Motors Corporation and General Motors Acceptance Corporation as a result of the general verdict of guilty against them under proper instructions from the trial court in accordance with the provisions of Paragraph 12a (2) of the decree herein.

10. That respondents are not laboring under any competitive disadvantage with General Motors Corporation and General Motors Acceptance Corporation in the manu-

facture, sale, and financing of Ford cars by virtue of the prohibitions contained in Paragraphs 6 (i), 6 (k) and 7 (d) of the decree herein, and offered no evidence showing competitive disadvantage.

11. That the decree provided for a termination of the bar against affiliation, if the civil proceedings against General Motors Corporation and General Motors Acceptance Corporation were not successfully concluded by a court of last resort by January 1, 1941.

12. That by agreement among the parties the date for termination of the bar against affiliation has been extended from time to time to January 1, 1946.

13. That the provisions of paragraph 12 of the decree, relating to the bar against affiliation, were framed upon the basis that the ultimate rights of the parties thereunder should be determined by the Government's civil antitrust suit against General Motors Corporation and General Motors Acceptance Corporation.

14. That time was not of the essence with respect to lapse of the bar against affiliation.

15. That respondent, Ford Motor Company, has offered no proof that further extension of the bar against affiliation will place it at a competitive disadvantage with General Motors Corporation.

16. That further extension of the bar against affiliation until January 1, 1947, will not impose a serious burden upon respondent, Ford Motor Company, and will not place respondent, Ford Motor Company, at a competitive disadvantage as regards General Motors Corporation.

#### CONCLUSIONS OF LAW

1. That the Court has jurisdiction to entertain the several motions and to make a proper order, or orders, pursuant thereto.

2. That under Paragraph 12a (2) of the decree, general verdicts of guilty against General Motors Corporation and

others in the criminal antitrust proceedings, under proper instructions from the trial court, must be considered the equivalent of a decree against General Motors Corporation restraining the performance by General Motors Corporation of any agreements, acts, or practices which the trial court, in its instructions to the jury, held was a violation of the Sherman Act.

3. That under Paragraph 12a (3) of the decree herein, the restraints imposed by subparagraphs (d) to (f) and (h) to (I) inclusive, of Paragraph 6, and subparagraphs (a), (c) and (d) of Paragraph 7, are not subject to suspension provided the equivalent of a decree, as set out in Paragraph 12a (2), is secured against General Motors Corporation.

4. That the purpose and intent of Paragraph 12 was to provide that the test of the permanency of the bar against affiliation was to abide the outcome of the civil antitrust suit against General Motors Corporation, and that the time clause was subsidiary to such main purpose.

5. That the purpose and intent of the decree will be carried out if Ford Motor Company is given the opportunity at any future time to propose a plan for the acquisition of a finance company, and to make a showing that such plan is necessary to prevent Ford Motor Company from being placed at a competitive disadvantage during the pendency of complainant's civil litigation against General Motors Corporation, et al.

Now, Therefore, It Is Ordered, Adjudged and Decreed That:

1. The motion of Ford Motor Company seeking a suspension of subparagraphs (i) and (k) of paragraph 6 of the decree, subparagraph (d) of Paragraph 7 of the decree, and such parts of subparagraph (e) of Paragraph 6 of the decree as may be necessary to do the things now prohibited by subparagraphs (i) and (k) of Paragraph 6, until such time as they shall be imposed upon General Motors Corporation and its subsidiaries, either by consent decree, or by final decree of a court of competent jurisdiction not subject

to further review, or by decree of such court, which, although subject to further review, continues effective, be and the same is hereby denied.

2. The motion of Commercial Investment Trust Corporation and others seeking a suspension of subparagraphs (i) and (k) of Paragraph 6 of the decree, subparagraph (d) of Paragraph 7 of the decree, and such parts of subparagraph (e) of Paragraph 6 of the decree as may be necessary to do the things now prohibited by subparagraphs (i) and (k) of Paragraph 6, until such time as they shall be imposed upon General Motors Corporation and its subsidiaries, either by consent decree, or by final decree of a court of competent jurisdiction not subject to further review, or by decree of such court which, although subject to further review, continues effective, be and the same is hereby denied.

3. The motion of Ford Motor Company that an order be entered pursuant to Paragraph 12 of the decree, permitting Ford Motor Company to acquire and retain ownership of and control over or interest in any finance company, be and the same is hereby denied.

It Is Ordered Further that the aforesaid final decree as modified shall be and is hereby modified so that the second paragraph of Paragraph 12 thereof shall read as follows:

It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1947, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or



decree to that effect at the foot of this decree, and the right of any respondent herein, to make the application and to obtain such order or decree is expressly conceded and granted.

And It Is Further Ordered, Adjudged and Decreed That except as thus modified, the modified decree as previously entered shall stand in full force and effect. Dated this 25th day of July, 1946.

PATRICK T. STONE,  
*United States District Judge.*

(7356)

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**CLERK**

**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1946** 8

~~Number~~ # 2

**COMMERCIAL INVESTMENT TRUST CORPORATION,  
COMMERCIAL INVESTMENT TRUST, INC.,  
UNIVERSAL CREDIT CORPORATION, ET AL.,**

*Appellants,*

**vs.**

**THE UNITED STATES OF AMERICA**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE NORTHERN DISTRICT OF INDIANA**

**STATEMENT AS TO JURISDICTION**

**SAMUEL S. ISENBERG,  
ALPHONSE A. LAFORTE,**  
*Counsel for Appellants.*

**SCHERER, SCHERER & TAYLOR,**  
*Of Counsel.*

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IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE NORTHERN DISTRICT OF INDIANA,  
SOUTH BEND DIVISION

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Civil Action No. 8

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UNITED STATES OF AMERICA,

*Complainant,*

*vs.*

FORD MOTOR COMPANY, COMMERCIAL INVESTMENT TRUST CORPORATION, COMMERCIAL INVESTMENT TRUST, INC., UNIVERSAL CREDIT CORPORATION, UNIVERSAL CREDIT COMPANY OF DELAWARE, UNIVERSAL CREDIT COMPANY OF INDIANA, AND UNIVERSAL CREDIT COMPANY, INC.,

*Respondents*

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**STATEMENT AS TO JURISDICTION**

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In compliance with Rule 12 of the Supreme Court of the United States, as amended, Commercial Investment Trust Corporation, Commercial Investment Trust, Inc., Universal Credit Corporation, Universal Credit Company of Delaware, Universal Credit Company of Indiana, and Universal Credit Company, Inc. (hereinafter referred to as the appellants or the "Respondent Finance Companies"), submit herewith their statement showing the basis of the



jurisdiction of the Supreme Court to entertain an appeal in this case.

The basic question involves the authority of the trial court to refuse to modify an antitrust consent decree in accordance with the express provisions of the decree.

### **A. Jurisdiction Statute**

The statutory provisions that confer jurisdiction upon this court to review the decree of the District Court upon direct appeal are Section 2 of the Expediting Act of February 11, 1903, 32 Stat. 823, as amended, 15 U. S. C. Sec. 29, and Section 238 of the Judicial Code, as amended, 28 U. S. C. Sec. 345. The direct appeal provided by these statutes is the sole mode of review available to appellants. The following cases sustain the jurisdiction of the Supreme Court:

*Swift & Co. v. United States*, 276 U. S. 311, 323;

*United States v. California Co-op. Canneries*, 279 U. S. 553, 558;

*United States v. Swift & Co.*, 286 U. S. 106, 109;

*Ethyl Gasoline Corp. v. United States*, 309 U. S. 436, 446;

*Chrysler Corp v. United States*, 316 U. S. 556, 562.

### **B. Dates of Decree and Petition for Appeal**

The date of the final decree of the District Court here sought to be reviewed is July 25, 1946. The court below delivered no written opinion or discussion of the case, but did make certain findings of fact and conclusions of law in connection with the entry of the decree in question. A copy of these findings and conclusions, together with the final decree herein, is reproduced as Appendix A, and attached to this jurisdictional statement.\*

\* (Clerk's Note. The Findings, Conclusions and decree appear as in Appendix to the Statement as to Jurisdiction in No. 643 and are not reprinted here.)

The date upon which application for appeal to this Court was presented to District Judge Patrick T. Stone was September 16, 1946.

### **C. Statement**

This is an appeal from a final decree of the District Court of the United States for the Northern District of Indiana, South Bend Division; which, among other things, denied appellants' motion to suspend and modify certain portions of an earlier final decree, dated November 15, 1938, which had been entered in the same court with the consent of the parties in a suit in equity brought by the United States under Section 4 of the Sherman Antitrust Act of July 2, 1890, c. 647, 26 Stat. 209, as amended, 15 U. S. C. Sec. 4.

Paragraph 6(i) of the consent decree of November 15, 1938, restrains Ford Motor Company (hereinafter referred to as the "Manufacturer") from arranging or agreeing with appellants that an agent of the appellants and an agent of the Manufacturer shall together be present with any dealer for the purpose of influencing the dealer to patronize appellants. Paragraph 6(k) of such consent decree restrains the Manufacturer from recommending, endorsing or advertising the appellants to any dealer or to the public. Paragraph 12a of the consent decree provides that the restraints and requirements contained in Paragraphs 6(i) and 6(k) would be suspended until such time as they should be imposed, in substantially identical terms, upon General Motors Corporation and its subsidiaries in the event that the Trial Court, in its instructions to the jury in the criminal proceedings then pending against General Motors Corporation and others, should hold that these acts did not constitute a proper basis for the return of a general verdict of guilty.

Paragraph 7(d) of such consent decree restrains the appellants from arranging or agreeing with the Manufac-

turer that an agent of the Manufacturer and an agent of the appellants shall together be present with any dealer, for the purpose of influencing the dealer to patronize appellants. Paragraph 12a of the consent decree provides that the restraints and requirements contained in Paragraph 7(d) would be suspended until they should be imposed, in substantially identical terms, upon General Motors Acceptance Corporation and its subsidiaries in the event that the Trial Court, in its instructions to the jury in the criminal proceedings then pending against General Motors Corporation and others, including General Motors Acceptance Corporation, should hold that these acts did not constitute a proper basis for the return of a general verdict of guilty against General Motors Acceptance Corporation.

The pertinent facts may be briefly stated: *Original proceedings*: On November 7, 1938, in the United States Court for the Northern District of Indiana, South Bend Division, the United States filed its complaint in equity against the Manufacturer, and against Commercial Investment Trust Corporation and certain of its subsidiaries, appellants herein. The bill, under Section 1 of the Sherman Act, alleged that the Manufacturer, together with the Respondent Finance Companies, had conspired to exclude all other finance companies from financing the sale of Ford automobiles. The bill prayed, among other things, that the Manufacturer be restrained from "agreeing with any finance company that an agent of the finance company and the Manufacturer will be present for the purpose of influencing the dealer to patronize any particular finance company;" and from "recommending or advertising any particular finance company to any dealer or to the public."

On November 15, 1938, a consent decree was entered as the final decree of the court, in which, among other things, the restraints specified hereinabove were granted with

respect to the Manufacturer and Respondent Finance Companies.

Paragraph 12a of the consent decree, after referring to a proceeding, then pending in the Court in which the decree was entered, against General Motors Corporation instituted by the filing of an indictment by the Grand Jury on May 27, 1938, No. 1039, provided in part as follows:

" (2) A general verdict of guilty returned against General Motors Corporation in said proceeding, followed by the entry of judgment thereon, shall be deemed to be a determination of the illegality of any agreement, act or practice of General Motors Corporation which is held by the trial court, in its instructions to the jury, to constitute a proper basis for the return of a general verdict of guilty. A special verdict of guilty returned against General Motors Corporation in said proceeding, followed by the entry of judgment thereon, shall be deemed to constitute a determination of the illegality of any agreement, act or practice of General Motors Corporation which is the subject of such special verdict of guilty. A plea of guilty or nolo contendere by General Motors Corporation, followed by the entry of judgment of conviction thereon, shall be deemed to be a determination of the illegality of any agreement, act or practice which is the subject matter of such plea. The determination, in the manner provided in this clause, of the illegality of any agreement, act or practice of General Motors Corporation shall (for the purpose of clause (3) of this paragraph) be considered as the equivalent of a decree restraining the performance by General Motors Corporation of such agreement, act or practice, unless or until such judgment is reversed, or unless such determination is based, in whole or in part, (a) upon the ownership by General Motors Corporation of General Motors Acceptance Corporation, or (b) upon the performance by General Motors Corporation of such agreement, act or practice in combination with some other agreement, act or practice with which the respondents are not



charged in the indictment heretofore filed against them by the Grand Jury on May 27, 1938, No. 1041;

“(3) After the entry of a consent decree against General Motors Corporation, or after the entry of a litigated decree, not subject to further review, against General Motors Corporation by a court of the United States of competent jurisdiction, or after the entry of a judgment of conviction against General Motors Corporation in the proceeding hereinbefore referred to, or after January 1, 1940 (whichever date is earliest), the court upon application of any respondent from time to time will enter orders:

(i) suspending each of the restraints and requirements contained in subparagraphs (d) to (f) and (h) to (l), inclusive, of Paragraph 6 of this decree to the extent that it is not then imposed, and until it shall be imposed, in substantially identical terms, upon General Motors Corporation and its subsidiaries, and suspending each of the restraints and requirements contained in subparagraphs (a), (c) and (d) of Paragraph 7 of this decree to the extent that it is not imposed and until it shall be imposed in substantially identical terms, upon General Motors Acceptance Corporation and its subsidiaries, either (w) by consent decree, or (x) by final decree of a court of competent jurisdiction not subject to further review, or (y) by decree of such court which, although subject to further review, continues effective, or (z) by the equivalent of such a decree as defined in clause (2) of this paragraph; provided, however, that if the provisions of a consent or litigated decree against General Motors Corporation and its subsidiaries corresponding to subparagraphs (j) and (k) of Paragraph 6 of this decree are different from said subparagraphs of this decree, then upon application of the respondents any provision or provisions of said subparagraphs will be modified so as to conform to the corresponding provisions of such General Motors Corporation decree;

(ii) suspending each of the restraints and requirements contained in the remaining subparagraphs (a), (b), (c) and (g) of Paragraph 6 to the extent that it is not then imposed, and until it shall be imposed, upon General Motors Corporation and its subsidiaries in any manner specified in the foregoing sub-clause (i) of clause (3), if any respondent shall show to the satisfaction of the court that General Motors Corporation or its subsidiaries is performing any agreement, act or practice prohibited to the Manufacturer by said remaining subparagraphs, and suspending each of the restraints and requirements contained in subparagraph (b) of Paragraph 7 of this decree to the extent that it is not imposed, and until it shall be imposed, upon General Motors Acceptance Corporation and its subsidiaries in any said manner, if any respondent shall show to the satisfaction of the court that General Motors Acceptance Corporation is performing any agreement, act or practice prohibited to Respondent Finance Company by said subparagraph (b) of Paragraph 7;

(iii) suspending the restraints of subparagraph (d) of Paragraph 7 of this decree as to Respondent Finance Companies, in the event that the restraints of subparagraph (i) of Paragraph 6 of this decree are suspended as to the Manufacturer.

“(4) The right of the respondents or any of them to make any application for suspension of any provisions of this decree in accordance with the provisions of this paragraph and to obtain such relief is hereby expressly granted.”

*Proceedings against General Motors*—The United States had originally obtained three indictments—one against Ford Motor Company and appellants herein with which it had been dealing, one against Chrysler Corporation and certain finance companies with which it had been dealing, and one against General Motors Corporation and its wholly owned

finance company, General Motors Acceptance Corporation. Each indictment also included different individual defendants. Appellants herein consented to a decree on November 15, 1938, and Chrysler Corporation also consented to a similar decree, but General Motors declined. Accordingly, the Government quashed the indictments against Ford and Chrysler, and the conditions set forth in Paragraph 12a of the Ford consent decree were designed to protect the appellants against prolonged disadvantage in competition with the non-consenting General Motors Corporation and General Motors Acceptance Corporation.

Subsequently in the criminal proceeding against General Motors on the indictment mentioned above the jury returned verdicts of guilty against General Motors Corporation and General Motors Acceptance Corporation; the court imposed sentence on November 17, 1939. On appeal to the United States Circuit Court of Appeals for the Seventh Circuit, these convictions were affirmed. The Supreme Court denied petition for certiorari October 13, 1942, 314 U. S. 618, and denied petition for rehearing November 10, 1942, 314 U. S. 710.

The instructions of the trial court to the jury and their interpretation by the Circuit Court of Appeals for the Seventh Circuit in the case of *United States v. General Motors Corporation*, 121 F. (2d) 376, show clearly that the trial court in its instructions held that the only agreements, acts or practices of General Motors Corporation and General Motors Acceptance Corporation which constitute a proper basis for a general verdict of guilty were those which coerced General Motors dealers and retail purchasers to finance their cars with a company with which they would not have financed them had they been free of such coercion. With respect to the matters enjoined in Paragraphs 6(i) 6(k) and 7(d), the trial court held in its instructions to

the jury in the General Motors case that such acts were proper. The trial court instructed (at page 5985) :

" . . . it is not charged here that to recommend the use of GMAC there is anything wrong ;"

and again (at pages 5987-5988) :

"You know you have heard of the terms : exposition ; persuasion ; argument ; coercion.

"They are different steps. They are graduated steps that I suppose every salesman goes through, except perhaps the last.

"In exposition one may expound the merits of that which he has to sell ; he may explain its nature and by his exposition make a clear picture of what he has.

"By persuasion he may endeavor to persuade the person to whom he is talking to accept that which he has to offer.

"There is little advancement in his further progress, to argue.

"Persuasion means something softer than argument, perhaps, but he may argue with him and argue with him the respective merits of his product and other products being offered to the person to whom he makes his offer.

"All of these are proper. He may not go beyond that and use something that is within his power to use as a club to coerce the person to accept that which he has to offer."

and again (at pages 6013-6014) :

"I think I said to you yesterday that the defendants may expound the alleged advantages of General Motors Acceptance Corporation ; they may explain fully the characteristics of its operations, as they claim they exist ; they may point out the advantages ; they may expound all of those things ; they may persuade ; they may use persuasion in their conversations, in their



communications with their dealers; they may even argue. Those things are all proper. They have a right, as I have said, to determine to whom they shall sell their automobiles and to whom they shall not. Those things constitute no violation of the law.

" \* \* \* and the charge in this indictment is, that this coercion, this misuse that has proceeded, according to the indictment beyond exposition, persuasion and argument, has resulted in a situation where the commerce in General Motors Corporation, the products of General Motors, from state to state, has been unreasonably restricted and restrained."

In this connection, the opinion of the Circuit Court of Appeals stated (at page 385):

"The Court pointed out that the defendants had the right to select any dealers they saw fit, determine upon what terms to sell General Motors cars, expound the advantages of GMAC and persuade dealers to use GMAC. But the Court added that they could not utilize existing and prospective contracts with dealers as "clubs or instruments" of coercion to compel acceptance of GMAC."

On October 4, 1940, the United States filed its bill in equity in the District Court of the United States for the Northern District of Illinois, Eastern Division, against General Motors Corporation and General Motors Acceptance Corporation. This case has not yet come to trial.

*Present pleadings*—On May 4, 1946, the Respondent Finance Companies filed their motion pursuant to subparagraphs (2) and (3) of Paragraph 12a of the consent decree to suspend Paragraphs 6(i) and 6(k) until the restraints and requirements contained in such paragraphs shall be imposed in substantially identical terms upon General Motors Corporation and its subsidiaries, and to

suspend Paragraph 7(d) until the restraints and requirements contained in such paragraph shall be imposed in substantially identical terms upon General Motors Acceptance Corporation and its subsidiaries, either by consent decree, or by final decree of a court of competent jurisdiction not subject to further review, or by decree of such court which, although subject to further review continued effective; and to modify Paragraph 6(a), during the suspension of Paragraphs 6(i), 6(k) and 7(d), to the extent that such Paragraph 6(e) would enjoin any of the acts prohibited by Paragraphs 6(i) and 6(k).

Attached to the Respondents' motion were, a copy of the instructions of the trial court to the jury in the *General Motors* criminal case and the affidavit of the Vice President and General Counsel for Respondent Finance Companies stating that he was familiar with the facts therein set forth and the circumstances upon which the aforesaid motion was filed, and that the statements therein set forth were true to his own knowledge.

*Action of the court below*—This motion with a motion by the plaintiff and a motion by Ford Motor Company was heard at a session of the District Court of the United States for the Northern District of Indiana, South Bend Division, on June 10, 1946. After hearing argument of both parties, during which no evidence was submitted by either side, the court, on July 25, 1946, made its "Findings of Fact, Conclusions of Law, and Order," denying the appellants' motion and directing the changing of the date in the second paragraph of Paragraph 12 of the consent decree to "January 1, 1947," as requested by the Government. There was no opinion.

It thus appears that nearly eight years after the entry of a final consent decree and contrary to the express provi-

sion of that decree, the Respondent Finance Companies have been denied the right expressly conceded and granted by the Government in Paragraph 12a of the decree to obtain the suspension of certain restraints, therein referred to. The Government has not obtained a similar decree against General Motors Corporation and its subsidiaries, or General Motors Acceptance Corporation and its subsidiaries, although nearly six years have elapsed since the filing by the Government of the equity suit against General Motors Corporation and General Motors Acceptance Corporation. Thus, General Motors Acceptance Corporation is not now subject to the same restraints imposed upon the Respondent Finance Companies by the terms of the consent decree of November 15, 1938.

#### **D. Substantial Nature of the Question Presented**

It was and is an express condition of the consent decree that the appellants would be entitled to a suspension of certain restraints and requirements imposed upon Respondent Finance Companies unless the trial court in the *General Motors* criminal case held that the agreements, acts and practices enjoined in the consent decree constituted a proper basis for the return of a general verdict of guilty. This condition represented a substantial benefit to the appellants and the consent decree would not have been signed by them had it not been inserted. Upon the fulfillment of this condition in the appellants' favor, the right to suspension should not be denied. A consent decree is an agreement as binding on the Government as it is on the defendant.

*United States v. International Harvester Co.*, 274 U. S. 693;

*United States v. Radio Corporation of America*, 46 F. Supp. 654, appeal dismissed, 318 U. S. 796.

To interpret the decree without giving effect to this condition would flagrantly distort the language of a carefully framed decree and seriously reflect on the reliability of the representations of the Government. Otherwise, no litigant would feel confident in entering into any future consent decree with the Government which had conditions beneficial to the defendant.

In the instructions to the jury in the *General Motors* criminal case the only agreements, acts or practices which were held to constitute a proper basis for the return of a general verdict of guilty were those which coerced dealers to finance their cars with a particular finance company. To "recommend," to "persuade," to "argue," were held to be perfectly proper and legal. The failure of the lower court to so find constitutes a serious deprivation of a substantial right belonging to the appellants.

No consent decree or other decree of a court of competent jurisdiction has ever imposed upon General Motors Corporation or its subsidiaries, or upon General Motors Acceptance Corporation or its subsidiaries, either in substantially identical terms or otherwise, any of the restraints and requirements with which the appellants herein have been burdened. Since September, 1945 particularly, these restraints and requirements have placed the appellants at a competitive disadvantage with General Motors Acceptance Corporation and with other new competitors in the field of automobile financing. This is evident from the past statements of representatives of the Government to the appellants, the Court and the public, and it is proved by the uncontradicted assertions of the appellants in their petition under oath, before the District Court. The court below neither found that such evidence must be shown to obtain the relief sought, nor ruled on the sufficiency of the proof



offered by the petition. No contradicting proof, by affidavit or otherwise, was offered by the Government. These changed circumstances clearly entitle the appellants to a suspension of the provisions of the consent decree until the restraints contained therein shall be imposed in substantially identical terms upon General Motors Corporation and its subsidiaries.

*United States v. International Harvester Co.*, 274 U. S. 693;

*Coca-Cola Co. v. Standard Bottling Co.*, 138 F. (2d) 788;

See: *Chrysler Corp. v. United States*, 316 U. S. 556, 564;  
*United States v. Swift & Co.*, 286 U. S. 106, 119.

Indeed, the public statements of representatives of the Government reveal that the purpose of the provision which contains the right of suspension was to relieve the appellants of this anticipated competitive disadvantage.

The decision in the *Chrysler* case, *supra*, is not controlling. Although the Chrysler consent decree and the Ford consent decree were similar, the issue before the Supreme Court in the *Chrysler* case was different from that involved here on the appeal of appellants herein. In the *Chrysler* case the Government sought to extend for a year the provision with regard to affiliation. The Government contended that it should be entitled to continue the injunction against Chrysler Corporation's obtaining an affiliate until there is a decision in the *General Motors* civil suit on the issue of divorcement. A majority of four Justices of the Supreme Court upheld the decision of the lower court extending the period of the ban against affiliation. Two Justices dissented. It was pointed out in the majority opinion as one of

the reasons for the decision that, because automobiles and trucks were not being manufactured during the war, Chrysler could not show any economic disadvantage if the affiliation-injunction continued.

In the present case appellants are invoking the terms of the decree itself. The appellants rely upon a binding agreement made by the Government that certain provisions of the consent decree would be suspended if the Government failed to obtain similar injunctive relief against General Motors in the civil suit or if the Government failed to obtain instructions by the trial court in the *General Motors* criminal case that the acts restrained constituted a proper basis for the return of a general verdict of guilty. Appellants contend that the trial court, in the *General Motors* criminal case, did not give such instructions but, on the contrary, as appellants specifically pointed out in the court below, the trial court, in the criminal case, gave instructions that the acts and practices enjoined by paragraphs 6(i), 6(k) and 7(d) of the decree were perfectly proper and lawful.

Furthermore, as the appellants showed in their petition to the court below, since the termination of hostilities in August, 1945, automobiles and trucks have been manufactured by Ford and the financing of automobiles has been revived under changed economic and competitive conditions; factors which did not exist in the *Chrysler* case.

These questions are substantial and highly debatable, and leave to speculation the authority of the United States to propose conditions beneficial to defendants in the making of consent decree.

**E. Conclusion**

It is thus plain that this appeal is within the exclusive jurisdiction of this Court and involves the review of substantial errors below.

Respectfully submitted,

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(7357)

OCT 17 1947

CHARLES E. HUGHES, JR.

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1947

No. 11

1

FORD MOTOR COMPANY,

*Appellant,*

*vs.*

THE UNITED STATES OF AMERICA

No. 12

2

COMMERCIAL INVESTMENT TRUST CORPORATION,  
COMMERCIAL INVESTMENT TRUST,  
INC., UNIVERSAL CREDIT CORPORATION,  
*et al.,*

*Appellants,*

*vs.*

THE UNITED STATES OF AMERICA

ON APPEAL FROM THE DISTRICT COURT OF THE  
UNITED STATES FOR THE NORTHERN DISTRICT OF INDIANA

**MOTION TO PASS**

CHARLES E. HUGHES, JR.,  
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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1947

No. 41

FORD MOTOR COMPANY,  
*Appellant,*

vs.

THE UNITED STATES OF AMERICA

No. 12

COMMERCIAL INVESTMENT TRUST CORPO-  
RATION, COMMERCIAL INVESTMENT  
TRUST, INC., UNIVERSAL CREDIT COR-  
PORATION, et al.,

*Appellants,*

vs.

THE UNITED STATES OF AMERICA

ON APPEAL FROM THE DISTRICT COURT OF THE  
UNITED STATES FOR THE NORTHERN DISTRICT OF INDIANA

**MOTION TO PASS**

Come now the appellants in the above-entitled causes  
and move that hearing of oral argument therein be passed  
until a Session of this Court commencing in April of the

resent Term, and in support of their motion make the following brief statement of the reasons therefor:

On November 15, 1938 a single consent decree in a civil antitrust action was entered against all of the appellants in both of these cases by the District Court of the United States for the Northern District of Indiana.

These appeals involve questions of the right of Ford Motor Company (herein called "Ford"), appellant in No. 1, and Commercial Investment Trust Corporation and others (herein collectively called "CIT"), appellants in No. 12, to termination or suspension of certain injunctions in that consent decree. There are two major questions. One (herein called the "affiliation question") is presented only in No. 11 and involves Ford alone. The second (herein called the "persuasion question") is presented in both No. 11 and No. 12 and involves both Ford and CIT. Both appeals are before this Court on a single record, the Government has presented a single brief thereon and both appeals will be presented in a single argument.

The affiliation question may be affected by the ultimate decision in a civil antitrust case which is pending in the District Court of the United States for the Northern District of Illinois, Eastern Division, entitled *United States v. General Motors Corporation, et al.* (Civil No. 2177). In that case, which was commenced on October 4, 1940, the relief sought in the complaint is a judgment requiring General Motors Corporation to divest itself of its affiliated finance company, General Motors Acceptance Corporation.

Paragraph 12 of the decree herein involved enjoins appellant Ford from, among other things, making any loan to or purchasing the securities of any of the appellants CIT or any other finance company. It also provides, however, as "an express condition of this decree", that, if

an effective final order or decree shall not have been entered on or before January 1, 1941, requiring General Motors Corporation to divest itself of all ownership and control of General Motors Acceptance Corporation and all interest therein, nothing in the decree shall preclude Ford "from acquiring and retaining ownership of and/or control over or interest in any finance company" or from dealing with such finance company and with the dealers as elsewhere provided in the decree.

The Government did not obtain such a decree against General Motors Corporation by January 1, 1941, and it has not obtained one since. The Government has accordingly annually sought amendments of paragraph 12 of the decree to extend that date year by year. Ford granted those requests by stipulation until after the war period, but it denied consent to extension of the date beyond January 1, 1946. Thereupon the Government made a motion in the District Court for such an amendment, which Ford opposed and to which it interposed a cross motion to be relieved from the injunction against affiliation pursuant to the condition in paragraph 12 referred to above. The District Court granted the Government's motion and denied that of Ford. Ford appealed to this Court from that decision (No. 11).

The possible bearing of the *General Motors* case, above mentioned, appears from this Court's decision in *Chrysler Corporation v. United States*, 316 U.S. 556 (1942). That case involved an appeal from an order of the District Court extending the time limitation contained in paragraph 12 of a consent antitrust decree against Chrysler Corporation and others which was substantially identical with paragraph 12 of the decree against Ford. In that case this Court,

after tracing the background of the consent decrees against Chrysler and others, and Ford and the other appellants herein, said (316 U.S. at page 563) that the basic purpose of the Chrysler decree was "that the ultimate rights of the parties thereunder should be determined by the Government's civil antitrust proceedings against General Motors Corporation and affiliated companies" and that "the time limitation was inserted to protect Chrysler from being placed at a competitive disadvantage in the event that the Government unduly delayed the initiation and prosecution of the General Motors injunctive proceedings."

The Government contends in substance that the *Chrysler* case is decisive of the affiliation question in No. 11. Ford contends, to the contrary, that the different facts appearing in the record in its case make the *Chrysler* case inapplicable, and that, if the *Chrysler* case be not deemed to be distinguishable, it should be re-examined.

One of the facts on which Ford relies in distinguishing this case from the *Chrysler* case is the lapse of over five years since this Court's decision in the latter case, during which time the *General Motors* case has not even been brought on for trial. The Government asserts various reasons for this delay in support of its contention that there has been no lack of due diligence on its part in prosecuting the case, which contention Ford controverts. The Government has informed appellants that a concerted effort will be made to bring that case on for trial this fall. In that event, the trial should have been completed or at least be well along by next April. If such does not prove to be the case, appellants will wish to consider again the question of what they should do with respect to the instant appeals in the light of the situation as it shall then appear.



The second, "persuasion", question involves the interpretation of paragraph 12A of the consent decree herein involved. That paragraph provides the circumstances in which Ford and CIT will respectively be entitled to a suspension of paragraphs 6(i) and 7(d) of the consent decree, the former of which enjoined Ford from arranging or agreeing with CIT or any other finance company that agents of both shall together be present with any dealer or prospective dealer for the purpose of influencing the dealer to patronize CIT or such other finance company, and the latter of which enjoins CIT correspondingly; and also will entitle Ford to a suspension of paragraph 6(k) of the decree enjoining it from recommending, endorsing, or advertising CIT or any other finance company to any dealer or to the public.

The corresponding paragraphs 6 and 12A in the consent decree against Chrysler and others are referred to in this Court's opinion in the *Chrysler* case, *supra*, and the Government cites the *Chrysler* case in its brief on its argument on the "persuasion" question as well as on the "affiliation" question. Appellants contend that the *Chrysler* case has no bearing whatever on the persuasion question, and see no present indication that that question will be affected by the decision in the pending *General Motors* case. However, as above stated, both the "affiliation" question and the "persuasion" question are to be presented to this Court on a single record and a single argument.

The Government has informed appellants that it is willing that hearing of oral argument in both cases be passed as herein requested.

WHEREFORE, appellants pray that hearing of oral argument in both of these cases be passed to a Session of this Court commencing in April of the present Term.

Respectfully submitted,

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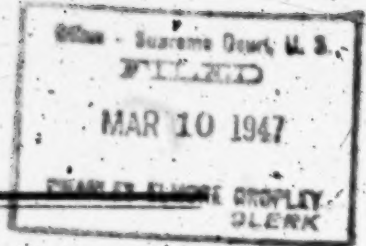
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October 16, 1947.

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**SUPREME COURT, U. S.**



**United States of America**  
**IN THE**  
**Supreme Court of the United States**

**OCTOBER TERM, 1946** 7

~~No. 615~~ 11

**FORD MOTOR COMPANY,**  
**Appellant,**

**vs.**

**THE UNITED STATES OF AMERICA**

**Appeal from the District Court of the United States**  
**for the Northern District of Indiana**

**BRIEF FOR APPELLANT**

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**United States of America**  
**IN THE**  
**Supreme Court of the United States**

**OCTOBER TERM, 1946**

---  
**No. 643**  
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**FORD MOTOR COMPANY,**  
**Appellant,**

**vs.**

**THE UNITED STATES OF AMERICA**  
---

**Appeal from the District Court of the United States  
for the Northern District of Indiana**  
^---

**BRIEF FOR APPELLANT**  
1  
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**I.**

**OPINIONS BELOW**

No opinion was delivered below. Findings of fact and conclusions of law were made (R. 158-161), but were not reported.

## II.

## JURISDICTION

(a) The statutes believed to sustain appellate jurisdiction are Section 345 of Title 28 and Section 29 of Title 15, United States Code.

(b) Under these statutes, appeal will lie to and only to the Supreme Court because the appeal is from a final order of the District Court in a suit in equity brought in the District Court of the United States for the Northern District of Indiana under Section 1-7, Title 15, United States Code, wherein the United States is complainant.

The order appealed from made some changes and denied other changes in a consent decree. The Supreme Court's exclusive jurisdiction of appeal from such an order is believed to be sustained by *Chrysler Corporation v. United States*, 316 U. S. 556 and *Swift & Company v. United States*, 276 U. S. 311.

(c) Appeal was taken within the time provided in the above statutes. The order appealed from was entered July 25, 1946. Application for appeal was presented September 17 and allowed, September 18, 1946.



## III.

## STATEMENT OF THE CASE

## A. The gist of the case.

This appeal concerns the operation of special clauses of an anti-trust consent decree; those clauses were put in to give the defendants relief if certain things happened.

The consent decree, entered November 15, 1938, restrained Ford Motor Company, appellant, from influencing its dealers to give their wholesale and retail financing business to finance companies preferred by Ford (R. 18-41). Among other things, it restrained Ford from owning a finance company—this will be called the bar against affiliation; and restrained Ford from persuading its dealers and the public to use any finance company—these will be called the restraints against persuasion.

On the same day a similar decree was entered restraining Chrysler Corporation. *Chrysler Corporation v. United States*. 316 U. S. 556.

If General Motors Corporation had also consented to such a decree, none of the problems of this appeal would have arisen. But General Motors chose not to do so (R. 174).

When the decrees were entered, General Motors was making 41% of all cars sold while Ford was making 23% and Chrysler 25% (R. 124A).

The government knew that, if General Motors were not restrained like Ford and Chrysler, equality of competitive conditions among them would be disturbed (R. 84, 85).

To prevent this, special relief clauses were put in the Ford and Chrysler decrees so that later on the restraints

4  
against Ford and Chrysler would be lifted if substantially identical restraints had not been imposed on General Motors (R. 84, 85).

In December, 1945, the government moved to have one of these clauses changed so that it would not operate the way it was written (R. 66-72). This clause, as amended by consent, said that the bar against affiliation would end January 1, 1946 if General Motors had not been required meanwhile to dispose of General Motors Acceptance Corporation (GMAC), a finance company wholly owned by General Motors (R. 34, 43, 48, 53, 59, 64). Since General Motors had not been required to do so and could not be required to do so by that time, the government's motion asked to have the date changed to January 1, 1947 (R. 70, 71). Ford filed a response to this motion (R. 74) and moved that an order be entered evidencing the end of this restraint exactly the way the clause was written (R. 76). One part of the order appealed from denied Ford's motion, granted the government's motion, and changed the date to January 1, 1947 (R. 162).

Ford also moved, under another of these clauses, to have the restraints against persuasion lifted, contending that they had not been imposed on General Motors either (R. 76). The other part of the order appealed from denied this motion (R. 161).

Appeal is from both parts of the order.

We will now describe more fully: (B) the restraints imposed on Ford by the consent decree; (C) the steps taken to impose upon General Motors the bar against affiliation, and the relief clause and motions relating to this restraint; (D) the steps taken to impose upon General Motors the restraints against persuasion, the relief clause relating to these restraints, and Ford's motion under this clause; and (E) the findings and conclusions upon which the District Court based each part of its order.

**B. The restraints imposed on Ford by the consent decree.**

There are many restraints; it is convenient to classify them in three groups.

*Group 1—The restraints against financial interest in a finance company.* These restraints—contained in paragraph 12—prevent Ford from:

accepting a commission from a finance company on account of retail time sales paper acquired by that company from Ford's dealers (R. 34);

making a loan to a finance company (R. 34);

purchasing the securities of a finance company (R. 34); and

paying any money to a finance company to induce it to lower its finance charges unless similar payments are made available to other finance companies (R. 34).

Of these restraints, it is only the restraint against purchase of the securities of a finance company—the so-called bar against affiliation—that is involved here.

*Group 2—The restraints against persuasion.* These restraints—contained in paragraph 6—prevent Ford from:

recommending, endorsing or advertising a finance company to a dealer or to the public—paragraph 6(k) (R. 30); and

arranging with a finance company for agents of each of them to be present with a dealer for the purpose of influencing him to patronize that finance company—paragraph 6(i) (R. 23).

These are the other restraints that Ford claims should be lifted.

*Group 3—The other restraints.* These restraints—also contained in paragraph 6—prevent Ford from:

giving one finance company an advantage not accorded others in obtaining the dealers' business—paragraphs 6(a) through 6(e) (R. 20-22);

discriminating or threatening to discriminate between dealers to influence their choice of finance companies—paragraph 6(f) (R. 22);

contracting with the dealer to patronize one finance company—paragraph 6(g) (R. 22-23);

cancelling or threatening to cancel a dealer's franchise because of his failure to patronize some finance company—paragraph 6(h) (R. 23); and

obtaining or using information from a dealer's books to influence his finance company arrangements—paragraph 6(i) (R. 31).

Ford has not raised any question about the restraints in this group. However, one of them, 6(e), which restrains Ford from giving one finance company a privilege not made available to all others, is so broad that it will have to be modified if the restraints against persuasion are to be effectively lifted. This will be explained more fully later.



**C. The steps taken to impose the bar against affiliation upon General Motors, and the relief clause and motions relating to this restraint.**

General Motors has never consented to a decree containing this restraint. It still owns GMAC. However, on October 4, 1940 the government started a civil action against General Motors. The prayer was for a decree requiring General Motors to divest itself of GMAC. When Ford argued its motion and the government's motion in the District Court, this General Motors case had not been reached for trial (R. 158, 175).

The relief clause—in paragraph 12—said that if before January 1, 1941 General Motors were not ordered permanently to divest itself of GMAC, then the bar against affiliation would lapse and Ford would be entitled to an order that it had lapsed (R. 34). The date, January 1, 1941, was changed from year to year by consent (R. 43, 48, 53, 59, 64). The last change by consent was to January 1, 1946 (R. 64).

Since General Motors had not been ordered to get rid of GMAC, Ford asked the court to order that the Ford bar against affiliation had lapsed (R. 76).

The government, however, contending that this relief clause does not mean what it says, asked to have the bar extended to January 1, 1947 without Ford's consent (R. 66). Since the District Court adopted the government's contention, the nature of that contention appears from the findings and conclusions of the court which are summarized later in this statement.

D. The steps taken to impose upon General Motors the restraints against persuasion, the relief clause relating to these restraints, and Ford's motion under this clause.

The only action taken to impose these restraints on General Motors was a criminal case. General Motors never consented to a decree and no civil action has been commenced against General Motors seeking to impose these restraints on it (R. 177).

When the Ford decree was entered, General Motors and GMAC had been indicted under the Sherman Anti-Trust Law. That case was tried and resulted in a general verdict of guilty. Judgment was entered November 17, 1939 and appeal taken to the Seventh Circuit Court of Appeals. The conviction was affirmed. *United States v. General Motors Corporation*, 121 Fed. 2nd 376. A petition for certiorari was denied October 13, 1941. 314 U. S. 618. A petition for rehearing was denied November 10, 1941. 314 U. S. 707.

The Ford relief clause—paragraph 12a(3)—said this: if General Motors were convicted the court would suspend each of the restraints in paragraph 6 (these include the restraints against persuasion) to the extent that it was not then imposed on General Motors by the conviction and that the suspension would last until such restraint was imposed in substantially identical terms upon General Motors by consent or litigated decree (R. 36, 37).

Paragraph 12a(2) set out the method of telling how far the conviction imposed each of these restraints on General Motors. It said that the conviction should be deemed a determination of the illegality of any agreement, act or practice of General Motors which was held by the trial court, in its instructions to the jury, to constitute a proper basis for the return of a general verdict of guilty. It then

said that such a determination of illegality should be considered—for the purposes of paragraph 12a(3)—the equivalent of a decree restraining the performance by General Motors of such agreement, act or practice (R. 35, 36).

Under paragraph 12a(3), Ford asked the court to suspend the restraints in paragraphs 6(i) and 6(k)—the so-called restraints against persuasion (R. 76).

Ford also asked the court to suspend the restraints in paragraph 7(d) and, to the extent necessary to make the other suspensions useful, the restraints in paragraph 6(e) (R. 76). Suspension of these paragraphs presents no question: whether or not they are to be suspended depends on what is to be done with 6(i) and 6(k). Paragraph 7(d) is a restraint upon certain finance companies that are also defendants in the Ford case (R. 32). These finance companies are all affiliated with each other, but not with Ford (R. 2). For convenience they will be called "CIT." Although 7(d) is not a restraint upon Ford, paragraph 12a(3)(iii) said that 7(d) should be suspended if 6(i) is suspended (R. 37). The reason for this is obvious: 7(d) is a correlative of 6(i); it enjoins CIT from arranging with Ford for agents of each of them to visit a dealer or prospective dealer together (R. 32). If Ford is free to make such arrangements it should be free to make them with CIT as well as any other finance company, and, if CIT were to continue enjoined, this would not be possible. Paragraph 6(e) restrained Ford from giving any facility, service, or privilege to one finance company without making it available to all finance companies (R. 21, 22). Suspension of 6(i) and 6(k) would be useless, if Ford had to take agents of all finance companies to the dealer or if Ford had to recommend, endorse and advertise all finance companies. So, if 6(i) and 6(k) are to be suspended, 6(e) should also be suspended to the extent necessary to make the other suspensions useful.

Therefore, the only question that really needs arguing in this part of Ford's motion is whether paragraphs 6(i) and 6(k) should be suspended—wholly, partly or not at all. Disposition of the other paragraphs depends on the answer to this question.

Ford contends: that the conviction of General Motors, under the instructions to the jury in that case, did not impose the 6(i) and 6(k) restraints on General Motors to the same extent as in the Ford decree; that the court should suspend these restraints to the extent that the conviction did not impose them on General Motors; and that they should remain suspended until they are imposed on General Motors in substantially identical terms by a later consent or litigated decree.

This is exactly what paragraph 12a(3) says (R. 36). Therefore, the issue on this part of Ford's motion is: to what extent did the judgment of conviction in the General Motors case impose these restraints upon General Motors? Did it impose them at all? If it did, did it impose them to the same extent as in the Ford decree? If not, how far did it impose them?

If it did not impose them at all, 6(f), 6(k) and 7(d) should be completely suspended and 6(e) suspended to the extent necessary to make the other suspensions useful. If the conviction imposed all of these restraints to the same extent as in the Ford decree, then Ford's motion was properly denied. If the conviction imposed some of the restraints and not others or imposed some of them to a lesser extent than the Ford decree, then 6(i), 6(k), 7(d) and 6(e) should be suspended at least to the extent that they were not imposed on General Motors, and possibly to some greater extent, or even completely, if other paragraphs of the Ford decree also contain the portion of these restraints that was imposed on General Motors.



Since the instructions of the trial court in the General Motors criminal case are to be used to determine to what extent these restraints have been imposed on General Motors, a copy of the instructions was attached to Ford's motion for the use of the court (R. 91-117).

**E. The findings and conclusions upon which the District Court based each part of its order.**

1. As to Ford's motion for an order evidencing the lapse of the bar against affiliation and the government's motion for an extension of that bar for another year, the court:

(1) Found (Finding of Fact No. 13) that paragraph 12 of the Ford decree was framed upon the basis that the ultimate rights of the parties thereunder were to be determined by the government's civil anti-trust suit against General Motors Corporation (R. 160) and concluded (Conclusion of Law No. 4) that such was the main purpose and intent of the paragraph (R. 161);

(2) Found (Finding of Fact No. 14) that time was not of the essence with respect to the lapse of the bar against affiliation (R. 160) and concluded (Conclusion of Law No. 4) that the time clause was subsidiary to the main purpose of the paragraph (R. 161);

(3) Concluded (Conclusion of Law No. 5) that the main purpose of the paragraph would be carried out if Ford were given the opportunity at any future time to propose a plan for the acquisition of a finance company and to show that the plan is necessary to prevent Ford from being placed at a competitive disadvantage during the government's civil litigation with General Motors Corporation (R. 161);

(4) Found (Finding of Fact No. 2) that the government has proceeded diligently and expeditiously with its civil litigation against General Motors Corporation (R. 158); and

(5) Found (Finding of Fact No. 15) that Ford had offered no proof that further extension of the bar against affiliation would place it at a competitive disadvantage with General Motors Corporation and (Finding of Fact No. 16) that the further extension of the bar to January 1, 1947 would not place it at such competitive disadvantage (R. 160).

On the basis of these findings and conclusions, the court granted the government's motion for extension of the bar against affiliation, extending it to January 1, 1947, and denied Ford's motion for an order that the bar had lapsed (R. 162).

2. As to Ford's motion under paragraph 12a, the court found:

(1) That the trial court in its instructions to the jury in the General Motors criminal case had held that each act restrained by paragraphs 6(i) and 6(k) of the Ford decree, among others, constituted a proper basis for the return of a general verdict of guilty (Finding of Fact No. 7) (R. 159);

(2) That the general verdict of guilty against General Motors was the equivalent of a decree restraining the performance by General Motors of the acts restrained by those paragraphs (Finding of Fact No. 8) (R. 159);

(3) That, therefore, the restraints imposed on Ford by those paragraphs had been imposed in substantially identical terms upon General Motors (Finding of Fact No. 9) (R. 159); and

(4) That Ford Motor Company was not laboring under any competitive disadvantage with General Motors Corporation in the manufacture and sale of Ford cars by virtue of the restraints contained in paragraphs 6(i) and 6(k) of the Ford decree and offered no evidence showing competitive disadvantage (Finding of Fact No. 10) (R. 159).

On the basis of these findings, the court denied this part of Ford's motion (R. 161).

#### F. Conclusion of Statement.

The court's order was entered July 25, 1946 (R. 157). The present appeal was then taken. Probable jurisdiction was noted on November 12, 1946 (R. 222).

### IV.

#### ASSIGNMENTS OF ERROR

Appellant specifies the following errors as those which are intended to be urged:

##### A. As to its motion under paragraph 12a:

1. The court erred in finding (Finding of Fact No. 7) that the trial court in its instructions to the jury in the criminal anti-trust proceedings against General Motors Corporation, *et al.*, held that the agreements, acts and practices enjoined in paragraphs 6(i) and 7(d) of the decree in this cause (*i.e.*, the arrangement by respondent with any finance company, or by any respondent finance company with this respondent, for a visit to a dealer or prospective dealer for the purpose of influencing him to patronize such finance company) constituted a proper basis

for the return of a general verdict of guilty in those proceedings, as such finding was not supported by the evidence, and, because of such error, also erred in finding (Finding of Fact No. 8) that such general verdict of guilty was the equivalent of a decree restraining the performance by General Motors Corporation and General Motors Acceptance Corporation of such agreements, acts and practices, and in finding (Finding of Fact No. 9) that the prohibitions imposed on this respondent by said paragraphs 6(i) and 7(d) had been imposed in substantially identical terms upon General Motors Corporation and General Motors Acceptance Corporation as a result of such general verdict, and in denying this respondent's motion for a suspension of the restraints contained in said paragraphs and for a suspension of such portion of paragraph 6(e) of the decree as restrains the performance by this respondent of the acts, practices and agreements also restrained by said paragraphs 6(i) and 7(d).

2. The court erred in finding (Finding of Fact No. 7) that the trial court in its instructions to the jury in the criminal anti-trust proceeding against General Motors Corporation, *et al.*, held that the agreements, acts and practices enjoined in paragraph 6(k) of the decree in this cause (i.e. the recommending, endorsing and advertising of any finance company to respondent's dealers or to the public) constituted a proper basis for the return of a general verdict of guilty in those proceedings, as such finding was not supported by the evidence, and, because of such error, also erred in finding (Finding of Fact No. 8) that such general verdict of guilty was the equivalent of a decree restraining the performance by General Motors Corporation of such agreements, acts and practices, and in finding (Finding of Fact No. 9) that the prohibitions imposed on this respondent by paragraph 6(k) had been imposed in



substantially identical terms upon General Motors Corporation as a result of such general verdict, and in denying this respondent's motion for a suspension of the restraints contained in such paragraph and for a suspension of such portion of paragraph 6(e) of the decree as restrains the performance by this respondent of the acts, practices and agreements restrained by said paragraph 6(k).

3. The court erred in finding (Finding of Fact No. 10) that this respondent is not laboring under any competitive disadvantage with General Motors Corporation in the manufacture, sale and financing of Ford cars by virtue of the prohibitions contained in paragraphs 6(i), 6(k) and 7(d) of the decree herein, and offered no evidence showing competitive disadvantage, as such finding was not supported by the evidence.

**B. As to Ford's and the government's motions under paragraph 12:**

4. The court erred in amending paragraph 12 of the decree in this cause by substituting the date January 1, 1947 therein in lieu of the date January 1, 1946 and in denying the motion of this respondent for the entry of an order to the effect that nothing in said decree shall preclude this respondent from acquiring and retaining ownership of and/or control over or interest in any finance company or from dealing with such finance company and with the dealers in the manner provided in said decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a thereof.

5. The court erred in finding (Finding of Fact No 13) that the provisions of paragraph 12 of the decree, relating to the bar against affiliation, were framed upon the basis

that the ultimate rights of the parties thereunder should be determined by the government's civil anti-trust suit against General Motors Corporation and General Motors Acceptance Corporation, as such finding was not supported by the evidence.

6. The court erred in finding (Finding of Fact No. 14) that time was not of the essence with respect to lapse of the bar against affiliation as such finding was not supported by the evidence.

7. The court erred in concluding (Conclusion of Law No. 4) that the purpose and intent of paragraph 12 was to provide that the test of the permanency of the bar against affiliation was to abide the outcome of the civil anti-trust suit against General Motors Corporation, and that the time clause was subsidiary to such main purpose.

8. The court erred in finding (Finding of Fact No. 2) that the government has proceeded diligently and expeditiously in its said civil anti-trust suit against General Motors Corporation, as such finding is not supported by the evidence.

9. The court erred in finding (Findings of Fact Nos. 15 and 16) that this respondent offered no proof that further extension of the bar against affiliation will place it at a competitive disadvantage with General Motors Corporation and that further extension of the bar against affiliation until January 1, 1947 will not impose a serious burden upon this respondent and will not place this respondent at a competitive disadvantage as regards General Motors Corporation, as these findings are not supported by the evidence.

10. The court erred in concluding (Conclusion of Law No. 5) that the purpose and intent of the decree will be carried out if this respondent is given the opportunity at

any future time to propose a plan for the acquisition of a finance company and to make a showing that such plan is necessary to prevent this respondent from being placed at a competitive disadvantage during the pendency of the government's civil litigation against General Motors Corporation, *et al.*

## V.

### SUMMARY OF ARGUMENT

The argument will be divided into two parts: Part A, relating to the restraints against persuasion, and Part B, relating to the bar against affiliation.

#### Part A—The Restraints Against Persuasion

I. The gist of the government's criminal case against General Motors, according to the instructions to the jury, was that General Motors, in concert with GMAC, had unduly restrained trade in its own products by acts and practices that compelled its dealers to use GMAC.

II. Under paragraph 12a of the Ford decree, if some acts or practices of General Motors were not held by the trial court, in its instructions to the jury in the General Motors criminal case, to constitute a proper basis for the return by the jury of a general verdict of guilty, and if some restraints in paragraph 6 of the Ford decree prevented Ford from performing those acts or practices, then those restraints were to be suspended to such an extent that Ford could perform those acts or practices without being held in contempt.

III. In its instructions to the jury in the General Motors criminal case, the trial court expressly held that it was proper for General Motors to recommend GMAC to its dealers, to expound the advantages of GMAC to its

dealers, to persuade its dealers to use GMAC and to argue with them that they should use GMAC. These acts and practices were not held to constitute a proper basis for the return of a general verdict of guilty.

IV. It is therefore clear that paragraph 6(k) of the Ford decree goes too far. By restraining all recommending, endorsing and advertising, that paragraph restrains some acts and practices that were not held by the trial court in the General Motors case to constitute a proper basis for the return of a general verdict of guilty. \*

V. The trial court in its instructions to the jury held that the only acts or practices that constituted a proper basis for a verdict of guilty were those that involved the use by General Motors of something within its power, such as the ability to cancel a dealer's franchise or to fail to renew such a franchise or to discriminate between dealers in the shipment of automobiles, as a club to force its dealers to use GMAC.

VI. All the acts that were held by the trial court to involve the use of force and therefore to constitute a proper basis for the return of a general verdict of guilty are restrained in paragraphs of the Ford decree that are not questioned here.

VII. Complete suspension of paragraph 6(k) will not permit Ford to go beyond persuasion. If Ford went beyond persuasion, it would violate paragraphs of the decree not questioned here. Therefore, paragraph 6(k) should be completely suspended.

VIII. The trial court did not hold that the conduct restrained by paragraph 6(i) involved the use of force and constituted a proper basis for the return of a verdict of guilty. It made no mention of such conduct.



IX. Since the General Motors trial court did not instruct the jury as a matter of law that the conduct restrained by 6(i) was improper, the lower court in this case was not justified in refusing to suspend 6(i) in the belief that the conduct restrained by that paragraph was coercive as a matter of fact. 6(i) should be suspended.

X. The difficulties of proof that might be imposed on the government by suspension of 6(i) and 6(k) do not justify denial of the suspension.

XI. The government itself has said that there is nothing illegal about advertising a finance company and that this restraint has not been imposed on General Motors.

XII. The finding of the District Court (Finding of Fact No. 10) (R. 159) that Ford was not laboring under any competitive disadvantages with General Motors in the manufacture and sale of Ford cars by virtue of the restraints contained in paragraphs 6(i) and 6(k) of the decree and that Ford offered no evidence showing competitive disadvantage is immaterial, even if it be true (which is denied).

XIII. The finding of the lower court that Ford was not under any competitive disadvantage with General Motors and had not made any showing of competitive disadvantage was wrong.

#### **Part B—The Bar Against Affiliation**

I. The relief clause in paragraph 12 should be enforced the way it was written even if the government has been diligent in requiring General Motors to part with GMAC and even if Ford had not shown any actual competitive disadvantage as against General Motors.

II. *Chrysler Corporation v. United States*, 316 U. S. 556, is distinguishable on the ground that the complete abandonment of automobile production during the war produced a situation not within the contemplation of the parties at the time of the consent decree and justified the further extension of the bar against affiliation in that case.

III. The government has not been diligent in requiring General Motors to part with GMAC and did not establish diligence in the court below.

IV. Ford is under a competitive disadvantage with General Motors as a result of the bar against affiliation and established this fact in the court below.

## VI. ARGUMENT

### PART A—THE RESTRAINTS AGAINST PERSUASION

- I. The gist of the government's criminal case against General Motors, according to the instructions to the jury, was that General Motors, in concert with GMAC, had unduly restrained trade in its own products by acts and practices that compelled its dealers to use GMAC.

The instructions are in two parts: the original instructions delivered before the jury retired (R. 91-107); and the supplemental instructions delivered later in answer to questions asked by the jury (R. 108-117).

Some sections of both parts have no bearing on this case, such as the court's comments on jury duty, its summary of the Sherman Law, its description of the defendants, its comments on the credibility of witnesses, the doctrine of reasonable doubt, and similar matters.

The sections of the original instructions that are important here are those dealing with the indictment and the evidence: beginning "So this indictment was brought" (R. 93) and ending "Those are the issues" (R. 101).

The important section of the supplemental instructions begins "Now, these paragraphs in the indictment" (R. 110) and ends "whether it is an unreasonable restraint" (R. 113).

Only excerpts from these instructions will be quoted here. Although the use of excerpts exposes one to the charge of distorting the original, this is the only means available for appellant to indicate what it believes these instructions mean. The instructions were delivered ex-

temporarily from a few notes (R. 111) and they possess the infirmities often found in such a document. The instructions for this reason are not completely self-explanatory. Appellant believes that its interpretation of the instructions as shown by these excerpts is a fair one when the instructions are viewed as a whole and that its use of excerpts does not result in any distortion. The instructions must be read through to determine whether the interpretation is fair.

The gist of the government's case is stated in many places in the instructions. Only a few of them will be quoted:

• • • "The indictment charges they have conspired in pursuance of this conspiracy to restrict or restrain unduly and unreasonably interstate commerce in these cars; they have used these means, or done these acts to force General Motors dealers to use General Motors Acceptance Corporation for financing purposes and sales of automobiles, and not to use outside finance companies" • • • (R. 94):

The government "can only complain if the defendants do sufficient of these acts charged in the indictment as constitute duress upon the dealer to accomplish a result that would have otherwise not have been accomplished, and to make a dealer do something that he would not have done of his own free will. That almost, is the question in this case—whether the dealer could act as a free man; whether he could act of his own free will" (R. 99).

"The government's case under this indictment is grounded upon this setup, if I may use that word: That these defendant corporations and these individual defendants who are officers, agents and representatives of the corporations, have by concerted action, knowingly participated in and done such things as create coercion upon the dealers to bring about a certain result, the use of GMAC" (R. 112).



"The ultimate question, after all, is whether, under all the facts and circumstances, the acts of coercion mentioned in the indictment and set up in the indictment have been proved beyond all reasonable doubt. Second, if they have been so proven, whether they have resulted to effectuate an unreasonable restraint of interstate commerce in automobiles. If it effectuated a restraint, then you have got to determine from all the facts and circumstances whether it is an unreasonable restraint" (R. 113).

This part of Ford's appeal, therefore, hinges on what the trial court meant when it referred to: "means" or "acts to force General Motors dealers to use General Motors Acceptance Corporation"; "acts charged in the indictment as constitute duress upon the dealer to accomplish a result that would have otherwise not have been accomplished"; "such things as create coercion upon the dealer to bring about a certain result, the use of GMAC."

Did it mean to include all acts and practices by which General Motors made it known to its dealers that it preferred to have them patronize GMAC? If it did, then obviously all conduct of the type restrained by paragraphs 6(i) and 6(k) of the Ford decree was held to constitute a proper basis for the return of a general verdict of guilty against General Motors; General Motors was to be deemed restrained from engaging in such conduct; and paragraphs 6(i) and 6(k) should not be suspended at all. However, if the trial court did not mean to include all such acts and practices, then the conviction was not a determination of the illegality of all such acts and practices; General Motors was not to be deemed restrained from performing some of these acts and practices; and paragraphs 6(i) and 6(k) should be suspended at least in part. This follows from the provisions of paragraph 12a of the Ford decree.

II. Under paragraph 12a of the Ford decree, if some acts or practices of General Motors were not held by the trial court, in its instructions to the jury in the General Motors criminal case, to constitute a proper basis for the return by the jury of a general verdict of guilty, and if some restraints in paragraph 6 of the Ford decree prevented Ford from performing those acts or practices, then those restraints were to be suspended to such an extent that Ford could perform those acts or practices without being held in contempt.

Paragraph 12a(1) of the Ford decree said that if the General Motors criminal case did not result in a conviction the whole decree would be suspended until substantially identical restraints were imposed on General Motors by consent or litigated decree. Since the General Motors criminal case did result in a conviction, 12a(1) does not apply.

The fact that an acquittal of General Motors was to relieve Ford of the entire decree did not, however, mean that the entire decree was to remain in effect if General Motors were convicted; paragraphs 12a(2) and 12a(3) said that parts of paragraphs 6 and 7 might be suspended even if General Motors were convicted.

12a(3) said that each restraint in paragraph 6 was to be suspended to the extent that it had not been imposed upon General Motors by the equivalent of a decree as defined in 12a(2). 12a(2) said: the conviction was to be a determination of the illegality of each agreement, act or practice that the trial court, in its instructions to the jury, held to constitute a proper basis for the return of a general verdict of guilty; and such determination was to be deemed the equivalent of a decree restraining the performance of such agreement, act or practice.

This meant that, if some act or practice of General Motors were not held by the trial court to constitute a proper basis for a verdict of guilty, there would be no determination of the illegality of that act or practice and General Motors would not be deemed to be restrained from performing it. Under 12a(2) this result would follow whether the trial court failed to hold that the act did constitute a proper basis for such a verdict or affirmatively held that the act did not constitute such a basis.

It follows from paragraph 12a(3) that if some restraints in paragraph 6 of the Ford decree prevented Ford from performing such an act or practice, then those restraints were to be suspended to such an extent that Ford could perform that act or practice without being held in contempt.

III. In its instructions to the jury in the General Motors criminal case, the trial court expressly held that it was proper for General Motors to recommend GMAC to its dealers, to expound the advantages of GMAC to its dealers, to persuade its dealers to use GMAC and to argue with them that they should use GMAC. These acts and practices were not held to constitute a proper basis for the return of a general verdict of guilty.

The trial court said:

General Motors has "a perfect right to have a finance company and to recommend its use" (R. 98).

"It is not charged here that to recommend the use of GMAC there is anything wrong;" (R. 99).

"You know, you have heard of the terms: Exposition; Persuasion; Argument; Coercion. They are different steps. They are graduated steps that I

suppose every salesman goes through, except perhaps the last. In Exposition one may expound the merits of that which he has to sell; he may explain its nature and by its exposition make a clear picture of what he has. By persuasion he may endeavor to persuade the person to whom he is talking to accept that which he has to offer. There is little advancement in his further progress to argue. Persuasion means something softer than argument, perhaps, but he may argue with him, and argue with him the respective merits of his product and other products being offered to the person to whom he makes his offer. All of these are proper" (R. 100).

"I think I said to you yesterday that the defendants may expound the alleged advantages of GMAC; they may explain fully the characteristics of its operations, as they claim they exist; they may point out the advantages; they may expound all of those things; they may persuade; they may use persuasion in their conversations, in their communications with their dealers; they may even argue. Those things are all proper" (R. 112).

IV. It is therefore clear that paragraph 6(k) of the Ford decree goes too far. By restraining all recommending, endorsing and advertising, that paragraph restrains some acts and practices that were not held by the trial court in the General Motors case to constitute a proper basis for the return of a general verdict of guilty.

By restraining Ford from recommending, endorsing and advertising a finance company to its dealers, 6(k) also restrains Ford from using exposition, persuasion and argument with its dealers. If all that General Motors had done was to recommend GMAC, expound the advantages of GMAC, persuade its dealers to use GMAC and argue with its dealers that they should use GMAC, it is difficult to see how the jury in the General Motors



case could have properly returned a verdict of guilty against General Motors.

Ford on the other hand could be held in contempt for merely recommending a finance company to its dealers.

If the instructions of the trial court meant what they said, then paragraph 6(k) should be suspended at least to the extent that it restrains recommendation, exposition, persuasion and argument as such.

Our position here is similar to the position taken by Mr. Justice Frankfurter in his dissenting opinion in *Chrysler Corporation v. United States*, 316 U. S. 556, 568. Apparently referring to the statement of the trial court in the General Motors case that General Motors has "a perfect right to have a finance company and to recommend its use" (R. 98), Mr. Justice Frankfurter said:

"Since the trial judge did not instruct the jury that affiliation as such was unlawful, and indeed the contrary, the criminal proceeding could no longer be claimed to control the validity of the affiliation prohibited by paragraph 12 of the Chrysler decree."

It is our position that since the trial judge did not instruct the jury that recommendation as such was unlawful, and indeed the contrary, the criminal proceeding could no longer be claimed to control the validity of recommendation.

Therefore, it is clear that something must be done to 6(k). Under the instructions of the trial court in the General Motors case Ford is entitled at the least to go as far as bare advertising, recommendation, persuasion and argument but 6(k) restrains it from doing any of these.

The next question is: Does 6(k) go out entirely or is it merely to be modified in some manner? We attack this

question in three stages: first, we will examine the trial court's instructions further, this time with the emphasis not on what the trial court held was legal but on what were the particular practices which were held illegal; secondly, we will look at the other sections of the decree and see if those other sections restrain Ford from doing what the trial court held was illegal; thirdly, we will show that none of 6(k) needs to be saved and that it should be suspended entirely because all the practices which the trial court held were illegal are covered in other sections of the decree.

The next three sections of this brief cover these three steps.

- V. The trial court in its instructions to the jury held that the only acts or practices that constituted a proper basis for a verdict of guilty were those that involved the use by General Motors of something within its power, such as the ability to cancel a dealer's franchise or to fail to renew such a franchise or to discriminate between dealers in the shipment of automobiles, as a club to force its dealers to use GMAC.

The trial court made this clear in many portions of its instructions:

• • • "but the Government's theory in this case is irrespective of these contracts and independent of them and outside of them the conditions have been asserted that they, under the designation of those to the grand jurors unknown, the actions have been such that the possibility, the ability to cancel, the ability to refuse to renew a contract, have been used as clubs upon the dealers to force them to use GMAC and that these acts that are complained of were acts that were used to force the dealers to use GMAC, the Government insists that these acts in-

spired by that motive have been such as to result in cancellations that otherwise would not have occurred; in discriminations that would not otherwise have occurred in the shipment of cars in interstate commerce and in refusals to renew that would not otherwise have occurred, and in the use of GMAC when it otherwise would not have been used" (R. 99).

After discussing exposition, persuasion and argument in the language quoted in paragraph III of this argument, the trial court said:

"He may not go beyond that and use something that is within his power to use as a club to coerce the person to accept that which he has to offer" (R. 100).

"Against that the Defendants have offered their testimony that they never have used duress, that they never have insisted, have never used this right of cancellation, this one-year contract, the right to renew it or not to renew it or used the other things as clubs. The easiest way I know to express it to you is that they never used it to force dealers to use GMAC." (R. 101).

"But the charge in this indictment is that they utilized a contract which was limited to one year and might or might not be renewed and a cancellation clause in that contract upon short notice and discrimination in the shipment or non-shipment of automobiles, used them as a club upon their dealers, and thereby coerced them to use something which they, as free agents, would not have used. That is the groundwork upon which this charge is brought, and whether they did that or not is a question of fact which you alone can decide, and Government says, and the charge in this indictment is, that this coercion, this misuse, that has proceeded, according to the indictment, beyond exposition, persuasion and argument, has resulted in a situation where the

commerce in General Motors cars, the products of General Motors, from state to state, has been unreasonably and unduly restricted and restrained" (R. 113).

**VI. All the acts that were held by the trial court to involve the use of force and therefore to constitute a proper basis for the return of a general verdict of guilty are restrained in paragraphs of the Ford decree that are not questioned here.**

It is clear from the above quoted portions of the instructions that cancellation of a dealer's franchise or refusal to renew a dealer's franchise or discriminations between dealers in the shipment of automobiles or threats of these actions, when done because the dealer had not patronized GMAC or when done to induce the dealer to patronize GMAC were held to involve the use of force and therefore to constitute a proper basis for the return of a general verdict of guilty.

These acts and practices, however, are all restrained by paragraphs of the Ford decree which are not questioned here. Paragraph 6(h) of the Ford decree restrains Ford from cancelling or terminating any contract, franchise or agreement with any dealer and from threatening to do so, because of the failure of such dealer to patronize a preferred finance company. Ford, therefore, could not cancel a dealership or refuse to renew a dealer's franchise without violating the decree. Paragraph 6(f) of the decree restrains Ford from giving or making available or denying or threatening to deny to any dealer any service or facility or from discriminating among its dealers in any other manner, for the purpose of influencing a dealer to patronize a preferred finance company. Therefore, Ford could not discriminate between its dealers in the shipment of cars or in any other manner or even threaten to do so



for the purpose of inducing a dealer to patronize a preferred finance company without violating its decree.

But the government will argue that these were not the only acts that were held by the trial court to involve force and therefore to constitute a proper basis for the return of a general verdict of guilty. Possibly the trial court in its instructions to the jury did not limit its definition of force to these acts. The trial court said:

The government "can only complain if the defendants do sufficient of these acts *charged in the indictment* as constitute duress upon the dealer to accomplish a result that would have otherwise not have been accomplished, and to make a dealer do something that he would not have done of his own free will" (R. 99).

"Against that the defendants have offered their testimony that they never have used duress, that they never have insisted, and never used this right of cancellation, this one year contract, the right to renew it or not to renew it or used *the other things* as clubs" (R. 101).

"If the government has proved the acts beyond all reasonable doubt *that are averred in this indictment*, you have a right to find these defendants guilty" (R. 101).

(The emphasis is supplied.) Perhaps other portions of the instructions may be found where the trial court referred in general terms to the acts charged in the indictment.

However, with the exception of recommendation, endorsement and advertisement, every act charged in the General Motors indictment is restrained by paragraphs of the Ford decree which are not in question here. The trial court summarized the indictment for the benefit of the jury (R. 94-96). We will quote each section of this summary

and at the end of it indicate the paragraph of the Ford decree that restrains the acts referred to:

The defendants "have used these means, or done these acts to force General Motors dealers to use General Motors Acceptance Corporation for financing purposes and sales of automobiles, and not to use outside finance companies by requiring them to agree to do so as a condition to entering into contracts with them" (restrained by paragraph 6(g) of the Ford decree), "making such contracts for one year only with the right to cancel without cause, in order to exercise it for that purpose; authorizing a cancellation of contracts, and cancelling contracts" (all restrained by paragraph 6(h) of the Ford decree), "and further by refusing and failing to furnish and in holding up the transportation, shipment, delivery of automobiles to dealers" (restrained by paragraph 6(f) of the Ford decree) "and further by examining dealers' records concerning financing and in coercing dealers, to permit such examination and to disclose such information, procuring same from employees of dealers without the dealers' knowledge and sometimes by bribery and requiring dealers to justify outside financing" (restrained by paragraph 6(i) of the Ford decree) "and further by using other means deemed necessary, appropriate and effective and that they have discriminated in various ways between General Motors dealers using General Motors Acceptance Corporation for financing purchases and sales of automobiles and those using outside finance companies in regard to delivery and financing of automobiles" (restrained by paragraph 6(f) of the Ford decree) "that they have given General Motors Acceptance Corporation quarters for its financial business" (restrained by paragraph 6(c) of the Ford decree) "information concerning the sale and delivery of automobiles to dealers" (restrained by paragraph 6(d) of the Ford decree) "instruments necessary for its security in connection with financing and be-

fore delivery" (restrained by paragraph 6(b) of the Ford decree) "while refusing all of said things to outside finance companies and imposing onerous requirements upon them as to payment for automobiles" (restrained by paragraph 6(a) of the Ford decree).

The remainder of the trial court's summary of the indictment was devoted to another charge relating to what is called the GMAC differential. The matters discussed in this part of the instructions were handled by an entirely separate paragraph of the Ford decree—paragraph 8 (R. 32) which is not involved here.

It is not without significance that in summarizing the indictment for the jury the trial court made no mention of the paragraph of the indictment which relates to advertising, endorsing, recommending and promoting GMAC. Paragraph 58 of the indictment (R. 148) did charge that General Motors advertised, endorsed, recommended and promoted the use of the automobile financing services, plans and facilities of General Motors Acceptance Corporation. The summary of the indictment given by the trial court follows the indictment quite closely until it comes to this paragraph. It then omits this paragraph and proceeds to take up the matters charged in the next succeeding paragraph. Were it not for the positive statements of the court with respect to recommendation, exposition, persuasion and argument, it might well be thought that this omission of the trial court was purely accidental. However, in view of these positive statements of the court, it seems unlikely that the omission was accidental. It seems clear from the instructions of the trial court taken as a whole that the court did not intend to hold that recommendation, exposition, persuasion and argument was conduct involving the use of force and therefore consti-

tuted a proper basis for the return of a general verdict of guilty.

It is, therefore, clear that each act and practice which the trial court held to involve the use of force, either expressly or by reference to the indictment, is restrained by paragraphs of the Ford decree that are not in question here. It is also clear that none of the acts specifically enjoined by paragraph 6(k) were held by the trial court to involve the use of force.

**VII. Complete suspension of paragraph 6(k) will not permit Ford to go beyond persuasion. If Ford went beyond persuasion, it would violate paragraphs of the decree not questioned here. Therefore, paragraph 6(k) should be completely suspended.**

There is no intermediate ground between threats and acts of persuasion. They are contiguous to and on opposite sides of the line drawn by the trial court between improper and proper conduct. The trial court recognized this in its description of exposition, persuasion, argument and coercion. It said of them: "They are different steps. They are graduated steps that I suppose every salesman goes through, except perhaps the last" (R. 100). After stating that the first three steps were proper, the court said: "He may not go beyond that and \* \* \* coerce the person to accept that which he has to offer" (R. 100). In other words, he may not go beyond those three steps and threaten, or, in the language of the trial court, "use something that is within his power to use as a club to coerce the person to accept that which he has to offer" (R. 100).

It is difficult to see how, if 6(k) be suspended, Ford could go beyond recommendation, exposition, persuasion



and argument without running afoul of the restraints in paragraphs 6(f) and 6(h) which respectively enjoin Ford from threatening to discriminate between dealers and threatening to cancel a dealer's franchise. If Ford's conduct amounted to such a threat, it would violate one of those paragraphs.

Since all the acts which the trial court held to involve the use of force and therefore to constitute a proper basis for the return of a verdict of guilty are restrained by paragraphs of the decree not questioned here and since complete suspension of paragraph 6(k) would not permit Ford to go beyond persuasion without violating such other paragraphs of the decree, there is no reason why paragraph 6(k) should not be suspended completely.

**VIII.** The trial court did not hold that the conduct restrained by paragraph 6(i) involved the use of force and constituted a proper basis for the return of a verdict of guilty. It made no mention of such conduct.

6(i) restrains Ford from arranging with a finance company that representatives of both of them together visit a dealer for the purpose of influencing him to patronize that finance company. This is a special case of 6(k) which restrains advertising, recommending and endorsing: obviously when a Ford representative visits a dealer and brings along a finance company representative Ford is endorsing the finance company. Instead of passing compliments on the finance company behind its back Ford passes the compliments in its presence.

Nowhere in the indictment or in the instructions of the trial court can there be found any language charging or holding that this conduct is unlawful. The trial court did

not mention joint visits much less say in so many words that joint visits were illegal.

The lower court's finding that joint visits were held unlawful by the trial court in the General Motors case must have been based on its belief that joint visits belong on the illegal side of the line that the General Motors trial court drew between proper and improper conduct. The court must have believed that a joint visit fell within the general language that the trial court used when it said that General Motors could not use force. In other words, since the General Motors trial court had not held that joint visits as such were improper as a matter of law, the lower court must have believed that they were coercive as a matter of fact. The lower court was not justified in doing this. That brings us to the next point in the argument.

**IX. Since the General Motors trial court did not instruct the jury as a matter of law that the conduct restrained by 6(i) was improper, the lower court in this case was not justified in refusing to suspend 6(i) in the belief that the conduct restrained by that paragraph was coercive as a matter of fact.**

In the first place, joint visits are not inherently coercive and the trial court was not justified in believing, if it did so, that they were coercive. Whether a joint visit could be coercive depends on the language used and on other circumstances. If at the joint visit, the language used went beyond mere persuasion, then the conduct would amount to something more than a joint visit and would fall within the restraints in the Ford decree that are not questioned here. On the other hand, it is conceivable that the joint visit might be arranged under such circumstances that a threat of cancellation of the dealer's franchise was clearly implied. But then, it is not the joint visit that is coercive; the coercive conduct is the

combination of all the acts and circumstances implying the threat. It seems that those who drafted the Ford decree must themselves have realized joint visits are not inherently coercive. Otherwise there would have been no need for the restraint. Coercive conduct is adequately restrained in other provisions of the decree.

The government will probably state flatly—as it did in the lower court—that all joint visits are coercive regardless of the circumstances and however reasonable the language used.

But it was not intended under paragraph 12a of the Ford decree that an issue of this kind would be settled on the basis of the opposing statements of counsel. Nor was it intended that the issue would be settled by the taking of testimony in this case.

Under paragraph 12a of the Ford decree the issue of illegality was to be settled on the basis of a determination of a court in a General Motors case. It was to be determined upon the basis of what the court in a General Motors case held to be unlawful.

The government will probably argue—as it did in the lower court—that this issue was determined in the General Motors criminal case. It will refer to the evidence that was introduced in the General Motors case and say that that evidence proved that joint visits were coercive. However, under paragraph 12a of the Ford decree the evidence in the General Motors case was not to be determinative. Nor was the conclusion of the jury to be determinative if a general verdict were returned. The reason for this is apparent. Had paragraph 12a of the Ford decree made the evidence or the general verdict determinative, Ford would then have been legitimately involved in the same kind of argument with the government that it was improperly involved

in before the lower court. Ford would say that the evidence in the General Motors case showed that the joint visits there were made to weak dealers whose franchises were about to be cancelled or terminated under circumstances that implied that their franchises would be cancelled or terminated if they did not patronize GMAC. Ford would say that the evidence on the issue was weak and that the jury could not have relied on it in returning its verdict. The government would take the other position and say that its evidence was strong and that the jury must have relied on it. These arguments accomplish nothing. It is believed that it was for the purpose of avoiding such arguments that paragraph 12a was drafted as it was. The test was not to be the evidence introduced or what the jury believed but was rather to be what the trial court held to constitute a proper basis for a verdict.

Since the trial court did not hold that a joint visit necessarily involved the use of force and therefore constituted a proper basis for a verdict of guilty, the court in this case was not justified in basing its order on a belief that a joint visit did involve the use of force.

The purpose of paragraph 12a was to provide that Ford would be subject to the same restraints as General Motors. It said in effect that the statements of unlawfulness in the instructions of the trial court in the General Motors criminal case would be the equivalent of a restraint against General Motors enjoining the acts held unlawful. This purpose of the decree will be carried out if 6(i) is suspended. Ford will be subject to the same general restraints to which General Motors is subject. If Ford is cited for contempt on the ground that it made joint visits under circumstances that amounted to coercion the court will have to decide the same questions of fact that the jury in the General Motors case had to decide under the instructions



of the trial court. It will have to decide what Ford did and whether its conduct amounted to coercion. Suspension of 6(i) will give Ford equality under the law with General Motors and that is what was intended by paragraph 12a of the Ford decree. Therefore, paragraph 6(i) should be completely suspended.

**X. The difficulties of proof that might be imposed on the government by suspension of 6(i) and 6(k) do not justify denial of the suspension.**

The government may maintain—as it did in the court below—that the difference between a threat and persuasion may involve such subtleties of language and conduct that it is impossible to tell where one begins and the other ends. This argument admits that the trial court drew a line between the two types of conduct, but criticizes the line drawn on the ground that the government's enforcement problem becomes difficult.

The difficulty of proof where the conduct is not clearly on one side or the other of the line drawn by the trial court is inherent in the nature of that line. The law is full of such lines. The difficulties involved in applying them in particular cases are generally not reason for abolishing them completely.

Sometimes equity will use its power in framing a decree under the anti-trust laws "to eradicate the evils of a condemned scheme by prohibition of the use of admittedly valid parts of an invalid whole." *United States v. Bausch & Lomb Optical Co.*, 321 U. S. 707, 724. But that power will not always be used. As stated by the court in the Bausch & Lomb case at page 729: "The path is narrow between the permissible selection of customers under the decision in Colgate & Co. and unlawful arrangements as to prices under this decree, but we think Soft-Lite is en-

titled to traverse it, after a reasonable interim to dissipate unlawful advantages, with such aid as Congress has given by the Miller-Tydings Act." Certainly there has been a reasonable interim in the Ford case, the injunction having stood undisturbed for over eight years.

This is not a case for application of that power. If the conduct held by the trial court in the General Motors case to be lawful is to be restrained, paragraph 12a of the Ford decree provided that such restraints should first be imposed upon General Motors by an equity decree. If imposed on General Motors, such restraints would become applicable to Ford through termination of the suspension. The application of the above doctrine in this case, which involves only the construction of a consent decree, would subject Ford to restrictions, contrary to the letter and intent of the decree, that had not been imposed on General Motors, the largest manufacturer in the automobile field. The resulting disturbance of equality of competitive conditions between them is not in the public interest.

**XI. The government itself has said that there is nothing illegal about advertising a finance company and that this restraint has not been imposed on General Motors.**

At the time of the entry of the consent decree, counsel for the government said:

"It is the Department's idea, the one with respect to advertising, the other with respect to adoption of a Code of Fair Competition, that this public benefit goes far beyond anything that we could hope to accomplish in a litigated case, besides eliminating the discriminatory practices and coercion complained of by the independents in this suit" (R. 82).

The same counsel said at the hearing in the court below:

"Now, as to the practice enjoined in paragraph (k), admittedly there is no injunction now outstanding against General Motors, either by way of the judge's charge to the jury or otherwise, which prohibits General Motors from advertising its affiliated finance company, GMAC. However, we submit that the other sections in paragraph (k), that a manufacturer shall not recommend or endorse the financing services of any particular finance company is effectively enjoined by the judge's instructions to the jury in the General Motors case," \* \* \* (R. 176).

It is submitted that if the restraint against advertising has not been imposed upon General Motors by the judge's charge to the jury, neither have the other restraints contained in paragraphs (k) and (i) of the Ford decree. While the judge expressly said that recommendation was proper, he did not mention advertising or joint visits. There seems no justification for holding improper that which was expressly held to be proper and holding proper that which was not mentioned. The truth is that the trial court in the General Motors case did not hold that any of the acts restrained by 6(i) and 6(k) constituted a proper basis for the return of a verdict of guilty.

**XII. The finding of the District Court (Finding of Fact No. 10) (R. 159) that Ford was not laboring under any competitive disadvantage with General Motors in the manufacture and sale of Ford cars by virtue of the restraints contained in paragraphs 6(i) and 6(k) of the decree and that Ford offered no evidence showing competitive disadvantage is immaterial, even if it be true (which is denied).**

This finding of fact is supported by no conclusion of law that Ford must show evidence of competitive disadvantage to be entitled to relief under paragraph 12a.

But, had there been such a conclusion of law, it would have been erroneous and Ford would have assigned it as error. A consideration of the decree as a whole shows that 12a was designed to give Ford equality with General Motors under the law with respect to the type of conduct restrained by 6(i) and 6(k) and not to rescue Ford from time to time, as the occasions arose, from the effect of things that General Motors might do.

If Ford is denied this relief, 6(i) and 6(k) can never be suspended under 12a. 12a for all practical purposes becomes useless. Even if General Motors today were not engaging in the type of activities restrained by 6(i) and 6(k), it could start these activities at any time in the future and Ford, if 6(i) and 6(k) had not been suspended, would be helpless under 12a.

The fact that showings of various types were required under other provisions of the decree before Ford would be entitled to the relief provided for in those provisions indicates that the absence of such requirement in connection with the suspension of 6(i) and 6(k) was intentional. A study of the decree as a whole shows that it was very carefully drawn. A comparison of the requirements in the



various relief clauses shows that the differences in those requirements were deliberate.

For example, paragraph 15 of the decree (R. 39) deals with the competitive situation between Ford and automobile manufacturers other than Chrysler and General Motors. It provides that in certain cases (where another manufacturer in any year sells more than one fourth as many cars as Ford in any State) Ford may have certain restraints lifted. But in this paragraph it was provided that Ford would not be entitled to the relief unless it appeared to the court that the other manufacturer was engaged in activities restrained in the Ford decree and that these activities of the other manufacturer resulted or threatened to result in placing Ford at a competitive disadvantage in the sale of automobiles. Here a full showing of competitive disadvantage was expressly required.

Compare this paragraph with paragraph 12a(3)(ii). 12a(3)(ii) said that, before Ford would be entitled to suspension of paragraphs 6(a), 6(b), 6(c), or 6(g) of the decree because these restraints had not been imposed on General Motors, Ford would have to show to the satisfaction of the court that General Motors was performing the acts prohibited by these paragraphs (R. 37). That was the only requirement. 12a(3)(ii) did not go as far as 15 and state that Ford would also have to show that the performance of these acts by General Motors resulted or threatened to result in placing Ford at a competitive disadvantage with General Motors.

12a(3)(i), the paragraph under which Ford asks suspension of 6(i), 6(k), and part of 6(e), does not even require that Ford show what General Motors is doing.

Had the lower court concluded as a matter of law that Ford, in this case, was required to show that General

Motors was making joint visits to dealers with GMAC and was recommending, endorsing and advertising GMAC and that Ford was at a competitive disadvantage with General Motors as a result of these activities, the conclusion would have been contrary to the plain meaning of the decree and erroneous.

Ordinarily, this reasoning would seem conclusive. However, it may be considered that the opinion of this court in *Chrysler Corporation v. United States*, 316 U. S. 556, is authority to the contrary. It is true that the same line of reasoning was applicable in that case. The consent decree involved in that case was substantially the same as that involved here; but in that case it was only the bar against affiliation that Chrysler wanted terminated. As in the Ford decree, the bar was to terminate January 1, 1941 if it had not been imposed on General Motors. The termination was to be automatic. There was no express requirement that Chrysler show competitive disadvantage or that the government show due diligence in its attempt to impose that restraint on General Motors. There was presumably the same evidence in the decree that the omission of these requirements had been deliberate: presumably under paragraph 15 of the Chrysler decree, as in the same paragraph of the Ford decree, if Chrysler wanted a restraint terminated because of competition of some manufacturer other than Ford and General Motors, it was expressly required to show not only competitive disadvantage but also that the government was not proceeding diligently to impose a similar restraint on such competitor. Yet this court read similar requirements into the provision for termination of the bar against affiliation.

We will discuss this more fully in Part B of this Argument relating to the bar against affiliation in the Ford decree. We humbly believe that this court should not have

read these provisions into a portion of the decree when they seem to have been deliberately omitted. We feel that perhaps it was done because of the war time conditions mentioned in the opinion. However, even if the court should read the same provisions into Ford's relief clause relating to the bar against affiliation, we think that the reasons for doing so, as expressed in the Chrysler case, would not support the reading of unexpressed provisions into the relief clause relating to paragraphs 6(i) and 6(k). Of course, if the court concludes in this case that the 6(i) and 6(k) restraints have been imposed on General Motors by the conviction, then Ford's competitive disadvantage would not entitle it to relief. The argument based on the Chrysler case would be that, since 6(i) and 6(k) had not been imposed on General Motors, the court should postpone the relief asked by Ford to give the government a reasonable chance to impose these restraints on General Motors, unless Ford showed that in the meantime the restraints put it under a competitive disadvantage. That is what this court did in the Chrysler case: it postponed the termination of the bar against affiliation to give the government a reasonable chance to impose that bar on General Motors, unless Chrysler showed that in the meantime the bar placed it at a competitive disadvantage.

But, even if the postponement in the Chrysler case were correct, it is clear that it would not be proper here. The decree contemplated that these specific restraints would be imposed on General Motors by January 1, 1940. The government obtained the conviction of General Motors in November of 1939. It knew then what the trial court had said in its instructions. It knew that there had been no holding that the conduct restrained in paragraphs 6(i) and 6(k) was unlawful. Yet, for over seven years, the government has taken no action to impose those restraints on General Motors.

Furthermore, the decision in the Chrysler case was undoubtedly to save the government from the complete lapse of the bar against affiliation. The argument there was that it was the primary purpose of the bar against affiliation that Chrysler should be bound by the outcome of the General Motors case and that this purpose should not be defeated by the operation of a time limitation that was said to be of secondary importance. We will point out later that this involved reading into that clause an emphasis that was not there. But in paragraph 12a, it was expressly provided that Ford should be bound by the outcome of the General Motors litigation and, notwithstanding this, it was provided that the restraints not imposed on General Motors by January 1, 1940 should be suspended until they were imposed on General Motors. It is not necessary to postpone the suspension of 6(i) and 6(k) to enable the government to save these restraints by imposing them on General Motors. When they are imposed on General Motors, the suspension of the Ford restraints will terminate. To postpone the suspension of the restraints would be to disregard the express provision of the decree that they be suspended.

**XIII. The finding of the lower court that Ford was not under any competitive disadvantage with General Motors and had not made any showing of competitive disadvantage was wrong.**

It is admitted by the government that General Motors Acceptance Corporation is a wholly owned subsidiary of General Motors. Ford contends that every visit made to a dealer by a representative of GMAC is the equivalent of a joint visit. The dealer knows that that representative speaks for General Motors as well as GMAC. Similarly every dealer knows that a General Motors representative speaks for GMAC. If a joint visit has any significance, it



is because of the implication that the finance company has manufacturer approval. It is clear to each General Motors dealer, without any joint visit, that General Motors wants him to patronize GMAC, that General Motors recommends GMAC. Even if GMAC were not a wholly owned subsidiary, but it were still known as the *General Motors Acceptance Corporation* recommendation would be inherent in the name alone.

Under these circumstances, it would seem idle to require proof that General Motors was making joint visits with GMAC and recommending GMAC.

Whether General Motors has actually gone beyond this and made joint visits and orally recommended GMAC, the record admittedly does not disclose. Ford felt that such a showing was not required by the decree and that, in view of General Motors control of GMAC and the use by GMAC of the General Motors name, such a showing should not be required by the court.

Furthermore, the record admittedly does not show the loss by Ford to General Motors of any particular sales as a result of Ford's inability to make joint visits with and recommend a finance company. It would be impossible as a practical matter to make any satisfactory showing of this. It would require an extensive investigation among the purchasers of General Motors cars to determine the reason why they did not buy Ford cars.

This would require personal interviews with large numbers of General Motors customers and those who said that they purchased General Motors cars because the GMAC financing plan was more attractive would have to testify to that effect. Ford is very reluctant to make such inquiry among General Motors customers. It feels that publicity of this kind would not be helpful to its own sales.

It also knows that people are loathe to answer personal questions like this, particularly where they may be called upon to testify. Furthermore, any inquiry into the motives that actuate the buying public is not apt to lead to reliable information.

Inquiry among Ford's own dealers would ordinarily be one way of ascertaining the extent of Ford's competitive disadvantage. But Ford does not feel that it can safely conduct such an inquiry. Paragraph 6(1) of the Ford decree (R. 31) restrains it from requiring disclosure of any information from its dealers for the purpose of influencing them to patronize a finance company. Under paragraph 10 of the decree (R. 33), if Ford is charged with violating paragraph 6(1), the burden is upon Ford to prove that the acts complained of were not done for the forbidden purpose. One of the purposes of this decree, and of the General Motors criminal case, was to free dealers of manufacturer influence. In a sense, therefore, Ford's dealers are adversaries in this matter. Ford feels that it would be unwise to inquire among its dealers as to how much business they have lost to General Motors as a result of their patronage of certain finance companies.

Ford, however, has shown that the financing of cars does have a bearing on sales volume, that Ford's sales volume has declined since the entry of the decree and that Ford believes that such decline is due in part to the restraints in question here.

There is a close relationship between sales and financing. Smaller down payments and smaller monthly installments payable over a longer period of time put the car within the purchasing power of more of that class of people who purchase out of monthly income rather than out of savings. The financing charge becomes a part of the delivered price of the car and reduction of this charge

increases the market for cars. The delivered price, size of down payment and size of each monthly installment will often determine which make of car a purchaser will buy. If GMAC offers a plan not available to Ford purchasers, General Motors will capture some of Ford's sales (R. 119).

Furthermore, the practices of the finance company to whom the dealer sells his retail time sales paper will determine whether a customer will come back when he wants to buy another car. Some finance companies make high charges for extensions of maturity and insurance renewals and will repossess without adequate notice. These practices affect Ford's goodwill since the car was sold at a place licensed to display Ford's trademark. Where the customer selects his own finance company, none of these considerations apply. Ford is only concerned where the customer uses the financing service made available by the dealer. It wants to persuade each dealer to make the best financing service available (R. 85, 86).

Dealers often do not select finance companies on the basis of the service they offer the customer. Finance companies bid for dealer patronage by offering them a rebate, called the dealer's reserve. This is not passed on to the customer. See paragraph 18 of the complaint in this case (R. 10).

If Ford were free to recommend, endorse and advertise a finance company, and to make joint visits, finance companies would compete for Ford approval as well as dealer approval. It would give Ford some voice in the financing arrangements of its dealers and give Ford a limited but nevertheless valuable means of inducing finance companies to offer services to Ford customers comparable to those offered by GMAC to General Motors customers.

As one example of the difference between the finance rates of GMAC and other companies, Ford has shown

these rates in the Detroit area (R. 122B). The basic cost of financing a General Motors car selling for \$1100.00 is \$60.00 for a twelve month period and \$80.50 for a fifteen month period. Through three other finance companies, the cost of financing a car selling for the same price is approximately \$88.00 for twelve months and \$118.00 for fifteen months. Competitive disadvantage with General Motors is bound to result from such differences.

Ford has also shown by affidavit how its sales have changed as compared with General Motors. In 1939, General Motors made 43.7% of all cars sold; in 1940, 47.6%; and in 1941, 47.3%. In 1939, Ford made 21.4% of all cars sold; in 1940, 18.9%; and in 1941, 18.8% (R. 124A).

Ford feels that this declining trend is in part at least due to these restraints in the consent decree (R. 87, 118).

#### **PART B—THE BAR AGAINST AFFILIATION**

- I. The relief clause in paragraph 12 should be enforced the way it was written even if the government has been diligent in requiring General Motors to part with GMAC and even if Ford had not shown any actual competitive disadvantage as against General Motors.

If this were a case of first impression, it would seem that the relief clause relating to the bar against affiliation should have been given effect exactly as it was written.

The clause was obviously a compromise of the conflicting interests of Ford and the government. The government believed that it was a violation of the Sherman Law for an automobile manufacturer merely to own a finance company. It therefore insisted that the consent decree restrain Ford from acquiring an interest in such a company. Ford was not averse to such a restraint if its two principal competitors were similarly restrained.



Chrysler Corporation, one of these competitors, was also willing to consent to such a restraint; but General Motors, the other and largest competitor (selling as many cars as Ford and Chrysler together), was not.

It would therefore be necessary for the government to impose this restraint on General Motors by litigation. This would take time. No such litigation had been commenced and, once commenced, it was unknown how long it would take to complete it. In the meantime, General Motors would continue to own GMAC and enjoy all the advantages that such ownership might bring. Ford had owned a finance company until 1934 and in that year had sold it to others. Ford realized that because of the advantages of finance company ownership it might again want to acquire one and might have to if it were to compete on equal terms with General Motors. Therefore, it was unwilling to wait an indeterminate length of time for the government to force General Motors to dispose of GMAC.

The government, on the other hand, would have liked to have had Ford agree to wait until the General Motors litigation was completed, however long it might take.

Compromise of these conflicting interests was possible because Ford was willing to concede that the government was entitled to a reasonable length of time in which to impose this restraint on General Motors and because the government was willing to concede that Ford would suffer if it had to wait an unreasonable length of time.

The compromise was effected by agreeing on a date beyond which Ford would not have to wait—January 1, 1941. This gave the government over two years in which to require General Motors to part with GMAC; it provided Ford with an automatic escape within a reasonable and foreseeable period. Everyone was apparently satisfied.

Then, shortly before January 1, 1941, the government told Ford that it had not yet succeeded in making General Motors dispose of GMAC and asked Ford if it would consent to be bound for one more year. Ford consented.

This happened for five successive years. Of course, when the government made its request just before January 1, 1942, Ford was already heavily engaged in the manufacture of non-automotive products for national defense; the country was at war on two fronts; and negotiations were under way for an order terminating all non-military passenger car production. It looked as though it would be a long time before Ford needed a finance company. It therefore had no objection to the extension of the bar against affiliation to January 1, 1943. For the same reasons, it did not object to the next three extensions. But when the government came to it before the expiration date on January 1, 1946, the situation had changed. The war had been over for four months. Ford was reconverting to the manufacture of passenger cars with all possible speed. The government had had over seven years in which to force General Motors to part with GMAC and it was still doubtful when, if ever, that litigation would come to an end. Ford felt it necessary to arm itself with every possible weapon for use in competing with General Motors. In the three years between the entry of the consent decree and the beginning of the war, Ford had lost sales to General Motors. That trend had to be reversed. Accordingly, Ford refused to consent to any further extension of the bar against affiliation.

Nevertheless, the government moved for a further extension of one year and the lower court granted it. The theory of the government and the lower court was based on a disregard of the date contained in the decree as amended. They went behind the compromise upon which

the parties had agreed in the original decree and its subsequent modification; tried to ascertain what the conflicting interests were that led to that compromise; and then tried to judge the importance of those interests.

First, the government contended—and the lower court found—that the primary purpose of paragraph 12 of the Ford decree was that the ultimate rights of the parties should be determined by the General Motors case. The lower court made a finding of fact (No. 13) and also a conclusion of law (No. 4) to this effect (R. 160, 161). No evidence was introduced to establish this purpose as a fact. Both the finding of fact and the conclusion of law must have been based on an examination of the decree.

Second, the government contended—and the lower court found—that the time clause in paragraph 12 was subsidiary to this primary purpose; that it was inserted to protect Ford from competitive disadvantage with General Motors in the event the government unduly delayed its prosecution of the General Motors suit. The government says the time clause was inserted merely to make it hurry up in its prosecution of General Motors. The lower court here too made a finding of fact (No. 14) and a conclusion of law (No. 4) (R. 160, 161). There was no evidence tending to establish as a fact that this was what the negotiators of the decree intended by the language used. This finding and conclusion must also have been arrived at merely from an examination of the decree.

Having established these two points, the lower court then found that the government had been diligent in its prosecution of the General Motors suit (Finding of Fact No. 2) and that Ford was not under any competitive disadvantage with General Motors as a result of the bar against affiliation (R. 158, 160). Upon this basis, the lower court extended the bar for one more year.

Ford believes that the language of the decree does not sustain this interpretation and that therefore the relief clause should have been enforced the way it was written.

The purpose of paragraph 12 was not that the rights of the parties should be ultimately determined by the General Motors litigation. If this had been its purpose, there would have been some provision for adjusting Ford's rights to the actual holding of the court in the General Motors case. Ford does not know that that case will determine as a general principle in every case that it is unlawful for an automobile manufacturer to own a finance company. Ford does not know what that case will determine as a matter of law. The holding in that case may well be confined to facts that are applicable only to General Motors. If Ford's rights were under the decree to be determined by that litigation, there would have been a provision in the Ford decree for adjustment of the bar against affiliation so that it would be commensurate with the holding in the General Motors case. This was what the decree provided with regard to the special restraints in paragraphs 6 and 7. The relief clause regarding those restraints specifically provided that the General Motors litigation should govern and did not provide for the complete termination of the restraints if they were not imposed on General Motors by January 1, 1940. Instead, it said they would be merely suspended; and they were then only to be suspended to the extent that they had not been imposed on General Motors. The restraints in paragraphs 6 and 7 were to be adjusted from time to time so that they would never exceed the restraints against General Motors.

This was not true in the case of the bar against affiliation. There was no provision for adjustment of the Ford restraint to the General Motors restraint. There was no provision for suspension and reinstatement. There was



nothing to indicate expressly that the Ford rights were to be determined by the rights of General Motors on the question of affiliation. Indeed, had the government's suit against General Motors been started promptly and ended adversely to the government within a year after Ford's consent decree, there was no provision for terminating Ford's bar against affiliation prior to January 1, 1941.

The purpose of the relief clause in paragraph 12 was merely to provide Ford with an automatic termination of a restraint to which it had agreed, if General Motors were not required to part with GMAC within a stipulated period. If General Motors were not required to do so within that time, then Ford was to be returned to its rights and liabilities under the Anti-Trust Laws. If Ford acquired a finance company, the government could prosecute it if its conduct were unlawful under those laws. But Ford would in the meantime be placed in a position of equality with General Motors.

In order to put this intent into effect, the parties drafted a very clear and simple clause, stated to be an express condition of the decree and to be effective notwithstanding any other provisions of the decree. This clause provided that the bar against affiliation would lapse and that appellant would be entitled to an order that it had lapsed. It is difficult to see how the clause could have been worded any more clearly.

The lower court has taken a clause that was obviously intended for the primary purpose of providing relief to Ford and has held that its primary purpose was to have Ford's rights ultimately settled by the General Motors case, notwithstanding the complete absence of any language indicating that Ford's rights were to be adjusted to the holding in the General Motors case.

The way was then paved for the court to hold that Ford's rights under the clause were of secondary importance.

The result is that what was intended to be a clear cut time limit has been converted into a limit with vague standards. The government is given as much time as it wants to prosecute General Motors subject only to the vague standard of due diligence and Ford can obtain relief sooner only if it comes into court with a plan for the acquisition of a finance company and shows adoption of the plan is necessary to prevent hardship.

By the perversion of simple language, the court has succeeded in reading into this clause phrases which were not there. This might be justified where necessary to arrive at the true intent of the parties; but it hardly seems justifiable to supply phrases which appear to have been deliberately omitted.

It is quite clear that these phrases were deliberately omitted. Compare the relief clause in paragraph 12 and that contained in paragraph 15. They have striking similarities of purpose; paragraph 12 was to protect Ford from General Motors while paragraph 15 was to protect it from some manufacturer other than General Motors and Chrysler. They both provided for the ending of restraints which had not been imposed on the competitor.

Under paragraph 15, if the sales of some manufacturer other than Chrysler or General Motors should in any year amount to at least 25% of Ford's sales, if such manufacturer should do something Ford was restrained from doing, if this resulted or threatened to result in placing Ford at a competitive disadvantage as against such manufacturer, and if the government had not obtained or was not proceeding with due diligence to obtain an adjudication

of the illegality of such conduct, then Ford was entitled to an order rendering inoperative the restraint against such conduct. Ford has consented to be restrained from performing such conduct and this clause was for the purpose of giving Ford relief if the restraint subjected it to competitive disadvantage.

The purpose of paragraph 12 was exactly the same. Ford had consented to be restrained from acquiring a finance company, but it wanted relief if the restraint were not imposed on its competitor. Under paragraph 12, however, the extensive showing demanded by paragraph 15 was not required. The reason was apparent. General Motors was known to be selling many more cars each year than Ford. It was known that General Motors already owned GMAC and that this ownership would give General Motors a competitive advantage. And the parties were then in a position to decide what would be a reasonable time for the government to require General Motors to dispose of GMAC. Accordingly, there was no requirement for a showing of the volume of General Motors sales, for a showing that General Motors owned GMAC, for a showing that this ownership placed Ford at a competitive disadvantage, or for a showing that the government had not proceeded diligently to force General Motors to part with GMAC. Instead, paragraph 12 merely provided that the bar against affiliation would become inoperative if General Motors had not been required to dispose of GMAC by January 1, 1941.

For these reasons, we think that paragraph 12 of the Ford decree meant what it said and did not mean what paragraph 15 said. Therefore, we think it was error for the court to read into paragraph 12 some of the requirements expressed in paragraph 15; and it was certainly wrong for it to do so on the basis that the primary pur-

pose of paragraph 12 was to have Ford's rights established by the General Motors litigation; where paragraph 12 failed to contain provisions such as were contained in paragraph 12a for the periodic adjustment of Ford's restraints to those from time to time imposed on General Motors.

In short, we think that paragraph 12 should have been enforced the way it was written and that this type of order, and only this type, would have carried out the basic intent of the parties.

But, assume that the lower court was correct in going behind the compromise which the government and Ford wrote into the decree; assume that the basic purpose of paragraph 12 was to have Ford's rights ultimately determined by the General Motors case; was the lower court right in extending the time on the ground that the government had proceeded diligently in the General Motors suit? Certainly from Ford's point of view, any delay in the General Motors case would have been objectionable whether caused by the government, by General Motors, by the condition of the trial court's calendar, or any other reason. The compromise between the parties was worked out to give the government a reasonable time to obtain a decree against General Motors and to protect Ford from the effects of any unreasonable delay in the securing of that decree. Assuming for the moment that the lower court was correct in overlooking the time the parties agreed upon as reasonable, was the lower court justified in determining reasonableness exclusively from the government's point of view? Was it justified in saying that, since the inability of the government to bring its case to trial was not the government's fault, the government had not had a reasonable time in which to complete the case? Ford submits that the court should have de-



terminated the reasonableness of the time from Ford's point of view. Ford's interest was as important a consideration leading to the compromise as the government's. To Ford, it made no difference whether the delay was due to the government or due to some other cause. Indeed, it was particularly anxious to avoid the effect of delays caused by General Motors. It knew that it was in General Motors' interest to delay that suit as much as possible. The government's explanation of the long, long delay in the General Motors case is that it has been harassed by General Motors. Ford can well picture the satisfaction with which General Motors views the predicament in which its policy of not cooperating with the government has placed one of its principal competitors who did cooperate with the government.

- Viewed from Ford's point of view, it is clear beyond any doubt that the time has been unreasonable. Ford originally thought a little over two years was reasonable. It granted one extension of one year before the war. However, the next four extensions were not made because Ford thought that the government had not had enough time; they were made, instead, because Ford was so heavily engaged in the war effort. The government has now had over eight years, approximately four times as many as originally contemplated. By any standard of reasonableness, this is too long.

**II. Chrysler Corporation v. United States, 316 U. S. 556, is distinguishable on the ground that the complete abandonment of automobile production during the war produced a situation not within the contemplation of the parties at the time of the consent decree and justified the further extension of the bar against affiliation in that case.**

Although we respectfully contend that the Chrysler case should not have been decided as it was, we believe that perhaps the basis of that decision was the change in circumstances since the decree was entered. The court said (316 U. S. 564):

"Moreover, we cannot be blind to the fact that the complete cessation of the manufacture of new automobiles and light trucks has drastically minimized the significance of the competitive factor."

It is true that this is the only language of the opinion from which it can be inferred that this was the basis of the decision. But, it seems to us that only some such exceptional circumstance could have justified the court in disregarding an express agreement of the parties as to what constituted a reasonable time, and in throwing upon Chrysler the burden of proving actual competitive disadvantage when it was clear that the decree did not require any such proof.

Such circumstance no longer exists. Ford reconverted to the manufacture of automobiles and now needs to have the relief clause enforced.\*

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\*See the order of August 30, 1945 of the War Production Board. F.R. Doc. 45-16273, 10 F. R. 11198.

**III. The government has not been diligent in requiring General Motors to part with GMAC and made no showing of such diligence.**

The inquiry as to whether the government has been diligent should start with the opinion of the court in *Chrysler Corporation v. United States*, 316 U. S. 556.

Although the court refused to disturb the finding of the lower court in that case to the effect that the government had proceeded diligently and expeditiously against General Motors, the court made this comment (316 U. S. 563):

“There is room for argument that this statement is markedly generous to the government; inasmuch as the civil suit against General Motors was not instituted until almost two years after the entry of the consent decree and only three months prior to the limiting date in paragraph 12.”

If there were room for argument in that case that the government had not proceeded diligently, it would seem that there is no room for argument in this case that the government has proceeded diligently. Almost five years have passed since the decision of that case. What was in that case an extension of the original period from two to four years has now become an extension to eight years, four times the original period and twice the length of the extended time in the Chrysler case.

To justify this additional time, the government relied entirely on affidavits (R. 66-72). As appears from the Chrysler case (316 U. S. 561), in that case “The government offered in evidence a transcript of the proceedings in the civil suit against General Motors.” Here no such transcript was offered.

The last occurrence in the General Motors case that was before this court in the Chrysler case was an order of the

District Court setting January 15, 1942 as the date by which General Motors would be required to answer. In view of this situation, this court extended the date for the lapse of the bar against affiliation to January 1, 1943.

In none of the motions to extend the date for lapsing in the Ford case, except the motion now before the court, did the government attempt to show any reason for the delay in the General Motors case. Such showing was not necessary because Ford agreed to the extension in each case.

However, on the last motion of the government for extension to January 1, 1947—the motion now before the court—some showing to support the claim of due diligence was required.

The only showing made was with respect to the period subsequent to December 31, 1944. The lower court and Ford were left completely in the dark as to what transpired between January 15, 1942—the date when General Motors was required to answer—and December 31, 1944, a period just fifteen days short of three years. Certainly, a finding of due diligence cannot be supported without any knowledge of what went on during all these years.

By consenting to extensions during that period, Ford was not consenting to what the government had done in the General Motors case. Ford was neither admitting that the government had been diligent nor waiving any future right it might have to claim that the government had not been diligent. Those consents were not predicated on any exchange of information between the parties. Each one was predicated only on the fact that, at the time the government made each request, Ford was not interested in opposing the request. It was busy with production for the war and was not making automobiles for the public.



After passing over this period of three years without a comment, the government in its affidavit said that since December 31, 1944 it had been diligent. It supports this statement by saying that, between that date and July 9, 1945, it was busy taking 220 depositions and that General Motors planned to take 200 additional depositions. To stop the taking of these additional depositions, the government on July 9, 1945 filed a motion which was heard on July 17 and 18, 1945. At the time of the government's motion in this case to extend the date for the lapse of the bar against affiliation (the date of the affidavit is December 29, 1945), the court in the General Motors case had not decided this motion relating to the depositions. During this five months period, the government could have taken most of the additional 200 depositions. If it could take 220 depositions between December 31, 1944 and July 9, 1945, a period of a little over six months, it could have gone a long way toward taking the remaining 200 depositions in five months. But, what does the affidavit say about this? Merely:

• • • "but the plaintiff and General Motors Corporation have endeavored by agreement to expedite and limit the taking of depositions in said case in the interest of bringing the General Motors case to trial at the earliest possible date" (R. 70).

That is all the court below had to rely on in finding that the government had proceeded diligently and expeditiously in its said suit (R. 158).

By the time this motion was argued in the court below, June 10, 1946, almost six months later, the General Motors case had still not been reached for trial.

It is submitted that the finding of the lower court was not supported by any evidence, and that on the basis of the showing made by the government, the lower court should have found that the government had not proceeded diligently and expeditiously in the General Motors case.

The government's lack of diligence should be sufficient ground for the denial of the government's motion to postpone the lapse of the bar against affiliation. If the primary purpose of paragraph 12 was to give the government a reasonable time within which to complete its General Motors litigation, then that purpose has been accomplished. The government has had a reasonable time. If the purpose of the time limit in paragraph 12 was to serve as an incentive to the government to expedite its General Motors litigation, then the time limit has failed to serve that purpose. Further extension of the date for lapse notwithstanding the government's lack of diligence would go beyond the holding in the Chrysler case and establish the principle that the diligence of the government was not an important factor in determining whether the date for lapse should be extended.

It is submitted that this part of the lower court's order should be reversed on this ground alone.

**IV. Ford is under a competitive disadvantage with General Motors as a result of the bar against affiliation and established this fact in the court below.**

The remarks made in this brief (Paragraph XIII of Part A of the Argument) relating to Ford's showing of competitive disadvantage in connection with the restraints in paragraphs 6(i) and 6(k) apply with equal force here, except that here we are concerned not with Ford's ability to influence other finance companies to furnish a financing service comparable with that furnished by GMAC, but rather with Ford's ability to provide by itself a competitive financing service. If Ford had a finance company, it could reduce its rates to those charged by General Motors, as, for example, in the Detroit area (R. 122B). If Ford had owned a finance company in 1940 and 1941, it probably

would not have lost the sales referred to in one of the affidavits accompanying its motion (R. 121).

As stated in Paragraph XIII of Part A of this Argument, it is as a practical matter, impossible for Ford to prove the specific loss of sales to General Motors as a result of these restraints. The best evidence of such loss would be the testimony of purchasers of General Motors cars. Ford is very reluctant to attempt to secure such testimony. Perhaps, the next best evidence would be the testimony of Ford's own dealers. But, for evidence of this kind, Ford has had to rely on information that happened to come to the attention of its own employees. As pointed out in Paragraph XIII of Part A of this Argument, Ford has felt that it could not safely go to its dealers for this information. It must be remembered that the primary purpose of this decree, as of the General Motors criminal case, was to free the dealers of the influence of the manufacturer. The dealers are, therefore, in a sense Ford's adversaries in this litigation. This avenue for producing evidence of actual competitive disadvantage is in effect closed to Ford.

Ford submits that its showing of competitive disadvantage is all that should be required of it. Ford contends that it is sufficient, and that the lower court was in error in finding that Ford was not under a competitive disadvantage and had not shown any.

With respect to the requirement of the court below that Ford submit to the court a plan for the acquisition of a finance company, it is submitted that this imposes upon Ford an unnecessary hardship as a condition precedent to the obtaining of the relief promised it in paragraph 12. Aside from the danger that the negotiation and adoption of such a plan might place Ford in contempt of court under paragraph 12, it is not practical for Ford to negotiate for

the purchase of stock in a finance company without knowing in advance that it can complete its purchase as soon as the negotiations have resulted in an agreement. No owner of stock in a finance company would enter into such an agreement contingent upon final approval of a court which it might take several months to obtain, particularly if an appeal was involved as it is in this case. Furthermore, Ford could not enter into such an agreement contingent upon approval of the court without violating the consent decree. Therefore, Ford in submitting the plan to the court would be in the position of submitting a plan which it did not know it could put in effect. Furthermore, if Ford decided not to purchase stock in some existing finance company but decided to organize a finance company of its own, this decision would depend upon economic facts which might change between the date the plan was submitted to the court and the date when it was finally approved. Ford should not be put to the burden of arranging the details of such a plan so far in advance of the time when it would know that it could put the plan into effect.

Ford is actually under a competitive disadvantage merely because it is restrained from owning a finance company. The finance companies who do the financing of Ford cars know that as long as that restraint continues Ford can do nothing to compete with them. The termination of the restraint, even if Ford never acquired a finance company, would put it within Ford's power to threaten to go into the financing business if existing finance companies did not give the kind of service which Ford deems essential to obtain a maximum sales volume.

Therefore, Ford submits that it should not be required to offer a plan for acquiring a finance company as a condition precedent to obtaining the relief promised it in paragraph 12.



## VII.

## CONCLUSION

It is respectfully submitted that the order of the court below should be reversed and the case remanded with appropriate directions to:

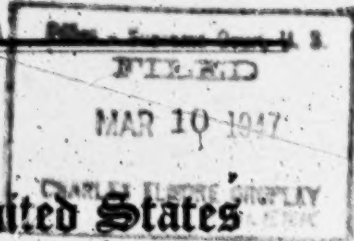
1. Grant appellant's motion for the suspension of paragraphs 6(i), 6(k) and 7(d) of the consent decree and for the suspension of such portion of paragraph 6(e) of said decree as is necessary to permit appellant to recommend, endorse or advertise any plan or finance company to any dealer or to the public either in the presence of or without the presence of a representative of such finance company, such suspension to continue until substantially identical restraints have been imposed upon General Motors Corporation either (x) by consent decree, or (y) by final decree of a court of competent jurisdiction not subject to further review, or (z) by decree of such court, which, although subject to further review, continues effective;
2. Deny the motion of the government for substitution of the date January 1, 1947 in lieu of the date January 1, 1946 in paragraph 12 of said decree;
3. Grant the motion of appellant for the entry of an order that nothing in the consent decree shall preclude appellant from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with said appellant's dealers in the manner provided in said decree or in any order of modifica-

tion or suspension thereof entered pursuant to paragraph 12a thereof.

Respectfully submitted,

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IN THE

**Supreme Court of the United States**

OCTOBER TERM, 1947 ~~1947~~ 1948

~~NO. 644.~~ 2

COMMERCIAL INVESTMENT TRUST CORPORATION,  
COMMERCIAL INVESTMENT TRUST, INC.,  
UNIVERSAL CREDIT CORPORATION, *et al.*,

*Appellants,*

*v.*

THE UNITED STATES OF AMERICA.

**BRIEF FOR APPELLANTS.**

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*Of Counsel:*

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1946.

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**No. 644.**

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COMMERCIAL INVESTMENT TRUST CORPORATION,  
COMMERCIAL INVESTMENT TRUST, INC.,  
UNIVERSAL CREDIT CORPORATION, *et al.*,

*Appellants,*

*v.*

THE UNITED STATES OF AMERICA.

---

Appeal from the District Court of the United States  
for the Northern District of Indiana.

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**BRIEF FOR THE APPELLANTS.**

---

**Opinion Below.**

The District Court did not deliver an opinion. Its final decree, dated July 25, 1946, was accompanied by certain findings of fact and conclusions of law (R. 157 *et seq.*).

**Jurisdiction.**

Petition for appeal was filed on September 16, 1946 (R. 206-207), and the appeal was allowed on September 18, 1946 (R. 213-214). The jurisdiction of this Court, to review the decree of the District Court upon direct appeal, is con-

ferred by Section 2 of the Expediting Act of February 11, 1903, as amended (32 Stat. 823, 36 Stat. 1167, 15 U. S. C. Sec. 29) and Section 238 of the Judicial Code, as amended (36 Stat. 1157, 38 Stat. 804, 43 Stat. 938, 28 U. S. C. Sec. 345). The direct appeal provided by these statutes is the sole mode of review available to appellants. This Court noted probable jurisdiction on November 12, 1946 (R. 223).

### Questions Presented.

On November 7, 1938 the United States filed a complaint in equity in the Court below, under Section 4 of the Act of July 2, 1890, c. 647, 26 Stat. 209, 15 U. S. C. Sec. 4, against Ford Motor Company (hereinafter referred to as "Ford") and against Commercial Investment Trust Corporation and certain of its subsidiaries, the appellants herein (hereinafter referred to as "Appellant Finance Companies") (R. 1 *et seq.*).

On November 15, 1938 a consent decree against Ford and the Appellant Finance Companies was entered in the Court below (R. 18 *et seq.*). Paragraph 6(i) of the consent decree restrains Ford from arranging or agreeing with Appellant Finance Companies that an agent of the Appellant Finance Companies and an agent of Ford shall together be present with any dealer for the purpose of influencing the dealer to patronize Appellant Finance Companies (R. 23). Paragraph 6(k) restrains Ford from recommending, endorsing or advertising the Appellant Finance Companies to any dealer or to the public (R. 30). Paragraph 7(d) is the counterpart of paragraph 6(i) in that it restrains the Appellant Finance Companies from arranging or agreeing with Ford that an agent of Ford and an agent of the Appellant Finance Companies shall together be present with any



dealer for the purpose of influencing the dealer to patronize the Appellant Finance Companies (R. 32). Other provisions of the consent decree restrain Ford and Appellant Finance Companies in other respects (R. 20-23; 31-32).\*

Paragraph 12a of the consent decree provides that after January 1, 1940, or after certain other contingencies, upon application of any of the consenting parties, the restraints

\* Ford is to permit any finance company, or any person, to pay for any automobile shipped by Ford to any dealer (R. 20-21); Ford shall not refuse to make available documents of title or liens in respect of automobiles if it makes such documents available to any finance company (R. 21); Ford shall not refuse to furnish space to any finance company for maintaining an office in Ford's place of business if similar space is furnished to any other finance company (R. 21); Ford shall not refuse to furnish information regarding dealers to any finance company so long as similar information is furnished to any other finance company (R. 21).

Ford shall not establish practices for financing automobiles whereby any particular finance company is given competitive advantage over another finance company (R. 21-22); Ford shall not deny any dealer any service or facility or discriminate among its dealers in favor of a particular finance company (R. 22); Ford shall not have any agreements with any dealers to patronize any particular finance company or require any dealer to observe any plan or rate of financing designated by Ford (R. 22-23); Ford shall not cancel or terminate any franchise agreement with any dealer or threaten to do so because of the failure of the dealer to patronize Appellant Finance Companies or any other particular finance company (R. 23). Ford is not to use any information to influence the dealer to patronize a particular finance company (R. 31).

Appellant Finance Companies shall not represent in any manner to any dealer that Ford requires them to patronize such finance company or that its failure to do so will result in the cancellation or termination of his franchise or agreement or in the loss of any advantage of service or facility furnished by Ford or that such finance company can obtain any privilege for the dealer which was not available to any other finance companies (R. 31).

Appellant Finance Companies are directed to pay, within 30 days after liquidation of all retail paper, to any dealer the amount of all reserves standing to the credit of the dealer (R. 31); Appellant Finance Companies will not enter into any arrangement with any dealer for wholesale financing for which a separate charge is not made, and which arrangement requires the dealer to deal with such finance companies in respect of retail financing (R. 31-32).

and requirements contained in certain paragraphs of the decree, including paragraphs 6(i) and 6(k), would be suspended until such time as they would be imposed in *substantially identical terms* upon General Motors Corporation and its subsidiaries and that the restraints and requirements contained in certain other paragraphs of the decree, including paragraph 7(d), would be suspended until such time as they would be imposed in substantially identical terms upon General Motors Acceptance Corporation and its subsidiaries either by a decree or the equivalent thereof. The equivalent of a decree, according to paragraph 12a, (2) of the consent decree, would be a determination by the Trial Court, in its instructions to the jury in criminal proceedings then pending against General Motors Corporation and General Motors Acceptance Corporation and others, that the particular acts or practices enjoined by paragraphs 6(i), 6(k) and 7(d) constituted a proper basis for the return of a general verdict of guilty (R. 35-38).

The criminal case against General Motors was tried in the Fall of 1939, and resulted in a conviction on November 17, 1939. The instructions of the Trial Court to the jury (R. 91 *et seq.*) did not include an instruction that the acts or practices enjoined by paragraphs 6(i), 6(k) and 7(d) would constitute a proper basis for the return of the general verdict of guilty.

On May 4, 1946, the Appellant Finance Companies filed a motion, pursuant to subparagraphs (2) and (3) of paragraphs 12a of the consent decree, to suspend paragraphs 6(i), 6(k) and 7(d) until the restraints and requirements contained in such paragraphs are imposed in substantially identical terms upon General Motors Corporation and its subsidiaries and General Motors Acceptance Corporation and its subsidiaries, respectively, and to modify paragraph

6(e) (R. 21-22), during the suspension of paragraphs 6(i), 6(k) and 7(d) to the extent that paragraph 6(e) would enjoin any of the acts and practices prohibited by paragraphs 6(i) and 6(k) (R. 187 *et seq.*). No relief was sought with respect to any other injunctive provisions of the consent decree.

The position taken by Appellant Finance Companies was that the Trial Court in the General Motors criminal case did not instruct the jury that the acts or practices restrained by paragraphs 6(i), 6(k) and 7(d) of the consent decree constituted a proper basis for a general verdict of guilty. On the contrary, Appellant Finance Companies called attention to the fact that the Trial Court, in its instructions in that criminal case, gave just the opposite instructions.

The Court below made findings of fact that under paragraph 12a (2) of the consent decree a general verdict of guilty was the equivalent of a decree restraining the performance by General Motors of the acts or practices enjoined by paragraphs 6(i), 6(k) and 7(d), and that the prohibitions of these paragraphs had been imposed in substantially identical form upon General Motors Acceptance Corporation by reason of the verdict of guilty (R. 159). The Court below also concluded that the Trial Court in the General Motors criminal case had given instructions that the acts and practices enjoined in paragraphs 6(i), 6(k) and 7(d), among others, constituted a proper basis for the return of the general verdict of guilty (R. 159).

The questions presented are:

1. Did the Court below erroneously refuse to suspend and modify the consent decree in accordance with the express provisions of such decree?

2. Did the Court below erroneously conclude that the general verdict of guilty in the criminal case against General Motors Corporation was the "equivalent" of a decree under paragraph 12a (2) of the consent decree restraining the performance by General Motors Corporation of the acts or practices enjoined by paragraphs 6(i), 6(k) and 7(d) of the consent decree?

3. Did the Court below erroneously conclude that the Trial Judge, in his instructions to the jury in the criminal proceedings against General Motors Corporation and General Motors Acceptance Corporation, held that the acts and practices restrained by paragraphs 6(i), 6(k) and 7(d) of the consent decree would constitute a proper basis for the return of a general verdict of guilty against General Motors Corporation?

### **Statute Involved.**

The relevant provisions of Section 1 of the Act of July 2, 1890, c. 647, 26 Stat. 209, 15 U. S. C. Sec. 4, known as the Sherman Act, follow:

SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. • • •

### **Statement.**

**Factual Background.**—On May 7, 1938, at South Bend, Indiana, three indictments were simultaneously filed against three separate groups of defendants. One indictment was filed against General Motors Corporation and General Motors Acceptance Corporation and others; the second indictment was filed against Chrysler Corporation and



Commercial Credit Corporation and others, and a third indictment was filed against Ford and Appellant Finance Companies and others. Each indictment alleged a separate conspiracy to violate the Sherman Act in respect of cars made only by the particular manufacturer named in that particular indictment. No defendant in any one indictment was also a defendant in either of the other two indictments.

In November, 1938, arrangements were made between the Government and the defendants in the Ford and Chrysler indictments for the dismissal of such indictments, the filing of civil complaints and the entry of consent decrees thereon. The General Motors group declined to enter into such an arrangement and the indictment against such group continued.

The equity complaint against Ford and Appellant Finance Companies was filed on November 7, 1938 in the United States District Court for the Northern District of Indiana, South Bend Division (R. 1 *et seq.*). The bill of complaint alleged that Ford, together with the Appellant Finance Companies\* had conspired to exclude all other finance companies from financing the sale of Ford automobiles in violation of Section 1 of the Sherman Act. Answers were filed denying the material allegations of the complaint, denying that the defendants were engaged in any acts or practices in restraint of trade, and pleading certain affirmative defenses (R. 14-18; 182-186).

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\* The complaint alleges that Ford had organized Appellant Universal Credit Corporation in 1928 and sold all of the stock in Universal Credit to Appellant Commercial Investment Trust Corporation in 1933 (R. 2). The Ford answer admits that it organized Universal Credit Corporation in 1928, acquired a major portion of the capital stock of Universal Credit, and in 1933 sold its stock in Universal Credit to Commercial Investment Trust Corporation (R. 14). In other words, since 1933 Ford has had no stock interest in, nor affiliation with, Universal Credit, and never had any stock interest in, or affiliation with any of the other Appellant Finance Companies.

On November 15, 1938, the consent decree was entered in the Court below (R. 18 *et seq.*). This decree had various injunctive provisions restraining Ford and Appellant Finance Companies from entering into certain agreements or engaging in certain acts or practices, as well as provisions enabling those parties to obtain the suspension of certain of the injunctive provisions if similar restraints were not obtained against General Motors Corporation and General Motors Acceptance Corporation.

The relevant portion of paragraph 6(i) of the consent decree provides:

"(i) The Manufacturer shall not, except in each instance upon written request of the dealer or prospective dealer, arrange or agree with Respondent Finance Company or any other finance company that an agent of the Manufacturer and an agent of the finance company shall together be present with any dealer or prospective dealer for the purpose of influencing the dealer to patronize Respondent Finance Company or such other finance company;" (R. 23).

The relevant portion of paragraph 6(k) of such decree provides:

"(k) The Manufacturer shall not recommend, endorse or advertise the Respondent Finance Company or any other finance company or companies to any dealer or to the public;" (R. 30).

Paragraph 7(d), the counterpart of paragraph 6(i), provides in part:

"(d) [The Finance Company] Shall not, except upon written request of the dealer or prospective dealer, arrange or agree with the Manufacturer that an agent of the Manufacturer and an agent of the Respondent Finance Company shall together be present with any dealer or prospective dealer for the purpose of influencing the dealer or prospective

dealer to patronize Respondent Finance Company;" (R. 32).\*

Since paragraph 12a sets forth the conditions and circumstances under which Appellants are entitled to have the injunctive provisions of paragraphs 6 and 7 suspended, we believe that it is important to quote paragraph 12a in full. It provides (R. 35-38):

"It is a further express condition of this decree that:

(1) If the proceeding now pending in this court against General Motors Corporation instituted by the filing of an indictment by the Grand Jury on May 27, 1938, No. 1039, or any further proceeding initiated by reindictment of General Motors Corporation for the same alleged acts, is finally terminated in any manner or with any result except by a judgment of conviction against General Motors Corporation and General Motors Acceptance Corporation therein, then and in that event every provision of this decree except those contained in this sub-paragraph (1) of this paragraph

\* The pertinent part of paragraph 6 (e) of the consent decree provides (R. 22):

"(i) the Manufacturer shall not establish any practice, procedure or plan for the retail or wholesale financing of automobiles for the purpose of enabling Respondent Finance Company or any other finance company or companies to enjoy a competitive advantage in obtaining the patronage of dealers through any service, facility or privilege extended by the Manufacturer pursuant to such practice, procedure or plan if such service, facility or privilege or a service, facility or privilege corresponding thereto, is not made available upon its written request to any other finance company upon substantially similar terms and conditions; and

"(ii) so long as the Manufacturer shall continue to afford any service, facility or privilege not otherwise specifically referred to in this decree to Respondent Finance Company or any other finance company or companies, it shall not refuse to afford similar or corresponding services, facilities or privileges upon substantially similar terms and conditions and upon written request to any other finance company for the purpose of giving Respondent Finance Company or any other finance company or companies a competitive advantage in obtaining the patronage of dealers;"

12a of this decree, shall forthwith become inoperative and be suspended, until such time as restraints and requirements in terms substantially identical with those imposed herein shall be imposed upon General Motors Corporation and General Motors Acceptance Corporation and their subsidiaries either (a) by consent decree, or (b) by final decree of a court of competent jurisdiction not subject to further review, or (c) by decree of such court which although subject to further review continues effective. The court reserves jurisdiction upon application of any party to enter orders at the foot of this decree in accordance with the provisions of this paragraph.

(2) *A general verdict of guilty returned against General Motors Corporation in said proceeding, followed by the entry of judgment thereon, shall be deemed to be a determination of the illegality of any agreement, act or practice of General Motors Corporation which is held by the trial court, in its instructions to the jury, to constitute a proper basis for the return of a general verdict of guilty. A special verdict of guilty returned against General Motors Corporation in said proceeding, followed by the entry of judgment thereon, shall be deemed to constitute a determination of the illegality of any agreement, act or practice of General Motors Corporation which is the subject of such special verdict of guilty. A plea of guilty or nolo contendere by General Motors Corporation, followed by the entry of judgment of conviction thereon, shall be deemed to be a determination of the illegality of any agreement, act or practice which is the subject matter of such plea. The determination, in the manner provided in this clause, of the illegality of any agreement, act or practice of General Motors Corporation shall (for the purpose of clause (3) of this paragraph) be considered as the equivalent of a decree restraining the performance by General Motors Corporation of such agreement, act or practice, unless or until such*



judgment is reversed, or unless such determination is based, in whole or in part, (a) upon the ownership by General Motors Corporation of General Motors Acceptance Corporation, or (b) upon the performance by General Motors Corporation of such agreement, act or practice in combination with some other agreement, act or practice with which the respondents are not charged in the indictment heretofore filed against them by the Grand Jury on May 27, 1938, No. 1041;

(3) *After the entry of a consent decree against General Motors Corporation, or after the entry of a litigated decree, not subject to further review, against General Motors Corporation by a court of the United States of competent jurisdiction, or after the entry of a judgment of conviction against General Motors Corporation in the proceeding hereinbefore referred to, or after January 1, 1940 (whichever date is earliest), the court upon application of any respondent from time to time will enter orders:*

(i) *suspending each of the restraints and requirements contained in sub-paragraphs (d) to (f) and (h) to (l), inclusive, of paragraph 6 of this decree to the extent that it is not then imposed, and until it shall be imposed, in substantially identical terms, upon General Motors Corporation and its subsidiaries, and suspending each of the restraints and requirements contained in sub-paragraphs (a), (c) and (d) of paragraph 7 of this decree to the extent that it is not imposed and until it shall be imposed in substantially identical terms, upon General Motors Acceptance Corporation and its subsidiaries, either (w) by consent decree or (x) by final decree of a court of competent jurisdiction not subject to further review, or (y) by decree of such court which, although subject to further review, continues effective, or (z) by the equivalent of such a decree as defined in clause (2) of this paragraph; provided, however, that if the pro-*

visions of a consent or litigated decree against General Motors Corporation and its subsidiaries corresponding to sub-paragraphs (j) and (k) of paragraph 6 of this decree are different from said sub-paragraphs of this decree, then upon application of the respondents any provision or provisions of said sub-paragraphs will be modified so as to conform to the corresponding provisions of such General Motors Corporation decree;

(ii) suspending each of the restraints and requirements contained in the remaining subparagraphs (a), (b), (c) and (g) of paragraph 6 to the extent that it is not then imposed, and until it shall be imposed, upon General Motors Corporation and its subsidiaries in any manner specified in the foregoing sub-clause (i) of clause (3), if any respondent shall show to the satisfaction of the court that General Motors Corporation or its subsidiaries is performing any agreement, act or practice prohibited to the Manufacturer by said remaining subparagraphs, and suspending each of the restraints and requirements contained in subparagraph (b) of paragraph 7 of this decree to the extent that it is not imposed, and until it shall be imposed, upon General Motors Acceptance Corporation and its subsidiaries in any said manner, if any respondent shall show to the satisfaction of the court that General Motors Acceptance Corporation is performing any agreement, act or practice prohibited to Respondent Finance Company by said subparagraph (b) of paragraph 7;

(iii) Suspending the restraints of subparagraph (d) of paragraph 7 of this decree as to Respondent Finance Company, in the event that the restraints of subparagraph (i) of paragraph 6 of this decree are suspended as to the Manufacturer.

(4) *The right of the respondents or any of them to make any application for suspension of any provisions of this decree in accordance with the provisions of this paragraph and to obtain such relief is hereby expressly granted.*" (Italics supplied.)

Thus, under paragraph 12a (3) of the consent decree the restraints and requirements contained in paragraphs 6(i) and 6(k), would be suspended until such time as they should be imposed, in substantially identical terms, by a decree upon General Motors Corporation and its subsidiaries or "by the equivalent of such a decree" (R. 36-37).

Similarly, the restraints and requirements contained in paragraph 7(d) would be suspended until such time as they should be imposed, in substantially identical terms, by a decree upon General Motors Acceptance Corporation and its subsidiaries "or by the equivalent of such a decree" (R. 36-37).

The "equivalent of such a decree" in both instances is defined as the Trial Court's instructions to the jury in the criminal proceedings then pending against General Motors Corporation and others, including General Motors Acceptance Corporation, that the acts or practices restrained by paragraphs 6(i), 6(k) and 7(d) constituted "a proper basis for the return of a general verdict of guilty" against General Motors Corporation (R. 35-36).

#### **The Criminal Case Against General Motors Corporation.**

—The criminal case against General Motors was tried in 1939 and the jury, on November 17, 1939, returned verdicts of guilty against General Motors Corporation and General Motors Acceptance Corporation. On appeal to the United States Circuit Court of Appeals for the Seventh Circuit, these convictions were affirmed, 121 F. (2d) 376.

This Court denied a petition for certiorari (314 U. S. 618), and denied a petition for rehearing (314 U. S. 710).

The instructions of the Trial Court on November 15 and 16, 1939 (R. 91 *et seq.*) and their interpretation by the Circuit Court of Appeals for the Seventh Circuit in the case of *United States v. General Motors Corporation et al.*, 121 F. (2d) 376, 385, held that the only agreements, acts or practices of General Motors Corporation and General Motors Acceptance Corporation which constituted a proper basis for a general verdict of guilty were those which coerced General Motors dealers and retail purchasers to finance their automobiles through a company with which they would not have financed them had they been free of such coercion.

#### **Instructions to the Jury in the General Motors Case.—**

The instructions of the Trial Court likewise showed with unmistakable clarity that the acts and practices enjoined by paragraphs 6(i), 6(k) and 7(d) of the consent decree, were lawful and did not constitute a proper basis for a general verdict of guilty.

The Trial Court instructed:

“ \* \* \* it is not charged here that to recommend the use of GMAC there is anything wrong;” (R. 99)

The Trial Court also said:

“You know, you have heard of the terms:

“Exposition;

“Persuasion;

“Argument;

“Coercion.

“They are different steps. They are graduated steps that I suppose every salesman goes through, except perhaps the last.



"In Exposition one may expound the merits of that which he has to sell; he may explain its nature and by his exposition make a clear picture of what he has.

"By persuasion he may endeavor to persuade the person to whom he is talking to accept that which he has to offer.

"There is little advancement in his future progress to argue.

"Persuasion means something softer than argument, perhaps, but he may argue with him, and argue with him the respective merits of his product and other products being offered to the person to whom he makes his offer.

"All of these are proper.

"He may not go beyond that and use something that is within his power to use as a club to coerce the person to accept that which he has to offer." (R. 100)

Later, the Trial Court said:

"I think I said to you yesterday that the defendants may expound the alleged advantages of GMAC; they may explain fully the characteristics of its operations, as they claim they exist; they may point out the advantages; they may expound all of those things; they may persuade; they may use persuasion in their conversations, in their communications with their dealers; they may even argue. Those things are all proper. They have a right, as I have said, to determine to whom they shall sell their automobiles and to whom they shall not. Those things constitute no violation of the law.

"\* \* \* and the charge in this indictment is, that this coercion, this misuse, that has proceeded, according to the indictment, beyond exposition, persuasion and argument, has resulted in a situation where the commerce in General Motors cars, the products of General Motors, from state to state, has been un-

reasonably and unduly restricted and restrained.”  
(R. 112-113)

In this connection, the opinion of the Circuit Court of Appeals stated, 121 F. (2d) 376, 385:

“The Court [below] pointed out that the defendants had the right to select any dealers they saw fit, determine upon what terms to sell General Motors cars, expound the advantages of GMAC and persuade dealers to use GMAC. But the Court added that they could not utilize existing and prospective contracts with dealers as ‘clubs or instruments’ of coercion to compel acceptance of GMAC.”

**Civil Suit Against General Motors Corporation.**—On October 4, 1940, the United States filed its bill in equity in the District Court of the United States for the Northern District of Illinois, Eastern Division, against General Motors Corporation and General Motors Acceptance Corporation. This suit seeks the divorcement of General Motors Acceptance Corporation from General Motors Corporation. This complaint (which is a public document) does not ask for injunctive relief against the doing of the acts and practices enjoined by the consent decree in this case (R. 177). Nor has the complaint in the civil suit against General Motors ever been amended to ask such relief. To date, this civil suit against General Motors has not been brought to trial.

**The Motion Below.**—On May 4, 1946, the Appellant Finance Companies filed their motion below to suspend paragraphs 6(i) and 6(k) until the restraints and requirements contained in such paragraphs are imposed in substantially identical terms upon General Motors Corporation and its subsidiaries, and to suspend paragraph 7(d)

until the restraints and requirements contained in such paragraph are imposed in substantially identical terms upon General Motors Acceptance Corporation and its subsidiaries, either by consent decree, or by final decree of a court of competent jurisdiction not subject to further review, or by decree of such court which, although subject to further review, continues effective; and to modify paragraph 6(e), during the suspension of paragraphs 6(i), 6(k) and 7(d), to the extent that such paragraph 6(e) would enjoin any of the acts prohibited by paragraphs 6(i) and 6(k) (R. 187).

No relief was requested by Appellant Finance Companies (or by Ford in its motion) from any of the many other injunctive provisions of paragraphs 6 and 7 of the consent decree.

**Action of the Court Below.**—The motion by the Appellant Finance Companies, a motion by the Government and a motion by Ford,\* were heard by the Court below on June 10, 1946. After hearing argument, the Court, on July 25, 1946, made its "Findings of Fact, Conclusions of Law, and Order," denying the Appellant Finance Companies' motion, denying the Ford motion and granting the Government's motion (R. 157-162). There was no opinion.

Paragraphs 7, 8 and 9 of the Findings of Fact of the Court below read as follows (R. 159):

"7. That the trial court in its instructions to the Jury in the criminal antitrust proceedings against General Motors Corporation, et al., held that the agreements, acts, and practices enjoined in Paragraphs 6 (i), 6 (k) and 7 (d) of the Ford decree herein, among others, constituted a proper basis for the return of a general verdict of guilty.

\* Appellant Finance Companies did not join in the application by Ford seeking to terminate the injunction against affiliation.

"8. That under Paragraph 12, a (2) of the decree herein, the general verdict of guilty in the General Motors case, under the instructions to the jury by the trial court, is equivalent to a decree restraining the performance by General Motors Corporation of such agreement, acts, or practices as are enjoined herein by paragraphs 6 (i) 6 (k) and 7 (d) and other paragraphs of the decree.

"9. That the prohibitions contained in Paragraphs 6 (i) 6 (k) and 7 (d) of the decree herein have been imposed in substantially identical terms upon General Motors Corporation and General Motors Acceptance Corporation as a result of the general verdict of guilty against them under proper instructions from the trial court in accordance with the provisions of Paragraph 12a(2) of the decree herein."

We submit that the Court below erred in making each of these findings.

### **Summary of Argument.**

1. The express conditions subsequent, incorporated into the consent decree for the benefit of the consenting parties, including Appellant Finance Companies, are as binding upon the Government as the other provisions are upon the other signatories. These conditions are integral parts of the decree and must be given full effect.

2. Pursuant to paragraphs 12a (2) and (3) of the consent decree, application may be made for the suspension of any of the restraints contained in certain enumerated paragraphs (including paragraphs 6(i), 6(k) and 7(d)) if substantially identical restraints are not imposed upon General Motors Corporation and General Motors



Acceptance Corporation by a consent or litigated decree or the equivalent thereof. Under paragraph 12a (2), the equivalent of a decree is the determination of the illegality of such act or practice by reason of instructions by the Trial Court to the jury in the General Motors criminal proceeding that such act or practice would be a proper basis for the return of a general verdict of guilty.

3. A general verdict of guilty in the General Motors case was not stated to be the equivalent of a decree against General Motors and the Court below erred in so holding. Whether there is the equivalent of a decree restraining General Motors Corporation and General Motors Acceptance Corporation from doing the acts enjoined by paragraphs 6(i), 6(k) and 7(d), must, therefore, be determined by an examination of the instructions in the General Motors criminal case. If there were no instructions that the acts and practices enjoined by paragraphs 6(i), 6(k) and 7(d) would support a verdict of guilty, then there is no "equivalent" of a decree under paragraph 12a(2), and the Court below erred in not so finding.

4. The general verdict of guilty alone does not restrain General Motors Corporation and General Motors Acceptance Corporation from doing any of the acts and practices enjoined by the decree, including those specifically sought to be suspended, and the Court below erred in finding that it does. Appellant Finance Companies' right to seek suspension of particular restraints under paragraph 12a (3), "after the entry of a judgment of conviction" in the General Motors proceeding, clearly establishes the error of the finding of the Court below. If such finding is affirmed on appeal, the judgment of conviction in the General Motors proceeding would render all provisions of the consent decree

final, and the elaborate machinery provided by paragraphs 12a(3) and 12a(2) would be rendered meaningless. Such an interpretation would defeat the intention of the parties and be repugnant to the plain language of the consent decree.

5. The parties intended to be bound only by instructions of the Trial Court and not by the evidence that might be offered by the Government or by any claim or assertion made by the Government in the General Motors criminal case. If the test of an "equivalent" of a decree was to be the evidence offered by the Government, or any claim or assertion made by it, the parties would have said so. Therefore, any evidence offered at the trial of the criminal case, or any claim or assertion advanced by the Government therein, cannot be used as the basis for determining whether there was the "equivalent" of a decree.

6. The Trial Court's instructions to the jury in the General Motors case did not include a statement that the acts or practices enjoined by paragraphs 6(i), 6(k) and 7(d) would support a general verdict of guilty. On the contrary, those instructions recognized the legal line of demarcation between permissible acts of persuasion, exposition and argument and the area of conduct outlawed under the Sherman Act, such as coercive agreements, acts and practices. Those instructions clearly indicate that, under paragraphs 12a (2) and (3) of the decree, General Motors Corporation and General Motors Acceptance Corporation have not been subjected to the "equivalent" of a decree restraining their performance of the acts prohibited by paragraphs 6(i), 6(k) and 7(d), and, therefore, the motion for suspension thereof was improperly denied.

7. The practices presently enjoined by paragraphs 6(i), 6(k) and 7(d) of the consent decree do not involve

unreasonable restraints of trade, and the requested suspension, if granted, will not defeat any other provision of the consent decree.

8. Appellant Finance Companies are, at an economic disadvantage by reason of the injunctive provisions against them and the Government's failure to obtain similar injunctions against General Motors and General Motors Acceptance Corporation. Prior to and at the time of the entry of the consent decree, the Government, on numerous occasions, stated publicly that unless the General Motors group were subject to the same injunctive provisions, Appellants would be at an economic disadvantage.

The failure of the Government to obtain injunctions similar to those in paragraphs 6(i), 6(k) and 7(d), against General Motors and General Motors Acceptance Corporation, has the effect of discriminating against Appellants.

Every consideration of fair competition and equity supports the interpretation of the consent decree for which the Appellant Finance Companies contend, namely, that unless and until the Government has obtained similar injunctive provisions either by instruction of the Trial Court in the criminal case, or by decree, against General Motors and General Motors Acceptance Corporation, those restrictive provisions, in so far as they apply to Appellant Finance Companies, must be suspended.

## ARGUMENT.

### I.

The conditions incorporated into the 1938 consent decree for the benefit of the Appellants are binding upon the Government and must be given full effect.

The consent decree in this case evolved out of protracted negotiations between representatives of the Department of Justice, Ford and Appellant Finance Companies. It included many restraints which went beyond the injunctive provisions that are normally the consequence of litigation.\*

For that very reason, Appellant Finance Companies insisted upon incorporating therein provisions designed to afford them relief from the restraints imposed if certain conditions subsequent were not satisfied. Paragraph 12a (2) and (3) established the machinery for the suspension of certain restraints if a judgment of conviction were returned under varying circumstances in the then pending criminal case against General Motors Corporation.

These provisions were carefully drafted to express the intentions of the parties. They are integral and inseparable parts of the decree, and the Appellant Finance Companies would not have consented to the decree unless those provisions were incorporated therein.

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\* Assistant Attorney General Thurman Arnold at the time the consent decree was submitted to the Court below said (R. 194):

"Such a method of advertising has never been held to be violative of the antitrust laws, and the legality of its use, in the absence of positive fraud, has not been questioned.

"There are no precedents which compel the adoption of such restrictions on advertising."



A consent decree is an agreement as binding upon the Government as it is upon all other signatories. *United States v. International Harvester Company et al.*, 274 U. S. 693 (1927); *United States v. Radio Corporation of America et al.*, 46 F. Supp. 654 (D. Del. 1942), appeal dismissed, 318 U. S. 796 (1943).

In the *International Harvester* case, the Government in 1923, filed a petition to modify a consent decree entered in 1918. The Government's petition sought to divide the Harvester Company into various separate corporations whereas the 1918 decree made other provisions for the dissolution of the alleged monopoly. The petition was dismissed by the District Court and the Government appealed. This Court (per Mr. Justice Sanford), affirming the Court below, stated (p. 703):

"And a construction of this decree by which, although its requirements have been fully complied with and lawful competitive conditions established, the United States would nevertheless be entitled to further relief by the division of the International Company into separate and distinct corporations for the purpose of restoring the actual competitive conditions that had existed sixteen years before the entry of the consent decree, *would plainly be repugnant to the agreement approved by the court and embodied in the decree, which has become binding upon all parties, and upon which the International Company has, in the exercise of good faith, been entitled to rely.*" (Italics supplied.)

In the *Radio Corporation of America* case, cited above, the Government moved to vacate a consent decree theretofore entered into because it was of the opinion that the decree no longer promoted the public interest. Circuit Judge

Maris, sitting in the District Court, denied the motion and in so holding stated (p. 656):

"It has been held that such a decree in an anti-trust case binds the Government as well as the defendants (United States v. International Harvester Co., 274 U. S. 693, 703, 47 S. Ct. 748, 71 L. Ed. 1302), even though it later appears that it was inadequate when entered, for the agreement upon which it is based is within the power of the Attorney General to make and his authority to determine what relief will satisfy the requirements of the law 'includes the power to make erroneous decisions as well as correct ones.' Swift & Co. v. United States, 276 U. S. 311, 331, 332, 48 S. Ct. 311, 317, 72 L. Ed. 587. In the present case the Attorney General determined that certain relief short of that prayed for would satisfy the public interest and he agreed to the entry of decrees terminating the suit by granting that relief. *Since these consent decrees are based upon an agreement made by the Attorney General which is binding upon the Government* the defendants are entitled to set them up as a bar to any attempt by the Government to relitigate the issues raised in the suit or to seek relief with respect thereto additional to that given by the consent decrees. Aluminum Co. v. United States, 302 U. S. 230, 232, 58 S. Ct. 178, 82 L. Ed. 219; United States v. International Harvester Co., 274 U. S. 693, 703, 47 S. Ct. 748, 71 L. Ed. 1302. This is a very real benefit of which they would be deprived were the Government's motion to be granted." (Italics supplied.)

The conditions inserted in paragraph 12a of the consent decree constitute a real benefit to the Appellant Finance Companies, and any interpretation of the decree that fails to give proper effect to this condition would be at variance with the plain language of this carefully framed decree and

at odds with the intentions and understanding of the parties thereto. If such conditions are to be lightly brushed aside, future litigants would most assuredly hesitate, if not refuse, to agree to consent decrees which contain conditions beneficial to the defendant, to the severe prejudice of effective administration of the anti-trust laws.

The express conditions subsequent, which Appellant Finance Companies seek to invoke, must, therefore, be given full effect and interpreted in the light of their purpose and the understanding of the parties.

# 11.

Under paragraphs 12a (2) and (3) of the decree, Appellants are entitled to the suspension of certain restraints if substantially identical restraints are not imposed on General Motors Corporation and General Motors Acceptance Corporation by a decree or its equivalent, namely conviction on instructions that such practices would constitute a proper basis for a verdict of guilty.

(a) A general verdict of guilty against General Motors Corporation was not intended by the parties to be, and is not, the equivalent of a decree against General Motors Corporation, and the Court below erred in so holding.

Finding of Fact No. 9 of the Court below reads (R. 159):

"9. That the prohibitions contained in Paragraphs 6 (i) 6 (k) and 7 (d) of the decree herein have been imposed in substantially identical terms upon General Motors Corporation and General Motors Acceptance Corporation as a result of the general verdict of guilty against them under proper instructions from the trial court in accordance with

the provisions of Paragraph 12a(2) of the decree herein."

The Court below concluded, therefore, that suspension of the provisions of paragraphs 6(i), 6(k) and 7(d) of the consent decree could only be sought if the Government failed to obtain a general verdict of guilty against General Motors Corporation and its subsidiaries in the then pending criminal action. This conclusion, we submit, was plainly wrong.

On the date of the consent decree, General Motors Corporation and its affiliate, General Motors Acceptance Corporation were subject to none of the restraints imposed thereby upon Ford and the Appellant Finance Companies. It was recognized that there could be varying dispositions of the Government's then pending criminal action against General Motors Corporation and that, under differing results, that corporation and its subsidiaries might not be subjected to all or even any of the restraints imposed upon Ford and Appellant Finance Companies by the consent decree. Indeed, Assistant Attorney General Thurman Arnold conceded that certain of the provisions of the consent decree went beyond any limits therefore recognized as proper by the courts (R. 194). Accordingly, in order to avoid perpetuating in the consent decree restraints which might never have warrant in law and which might never be imposed upon the competitors of Ford and of the Appellant Finance Companies, the parties incorporated in the consent decree appropriate provisions to remedy any such inequities.

Paragraph 12a of the consent decree makes provision for the relief of the consenting defendants to the extent that the restraints imposed by the consent decree are not thereafter imposed upon General Motors and General Motors Accept-



ance Corporation by decree or by the instructions of the Trial Court in the General Motors criminal case.

Paragraph 12a (1) provides that if the proceeding against General Motors Corporation did not result in a conviction, "*every provision*" of the decree except one, the bar against reaffiliation by Ford with any finance company, was to become inoperative and be suspended until substantially identical restraints were imposed upon General Motors Corporation and General Motors Acceptance Corporation by a later consent or litigated decree. (R. 35) Stated otherwise, the *entire decree* would collapse if General Motors Corporation were not convicted, and its restraints could only be revived if later proceedings succeeded in imposing substantially identical restraints upon General Motors Corporation and General Motors Acceptance Corporation.

Now what significance did the parties attach to a conviction in the General Motors case, and how was it expressed? It was obviously recognized that a judgment of conviction *alone* would not subject General Motors Corporation and General Motors Acceptance Corporation to all or any of the restraints imposed upon Ford and the Appellant Finance Companies by the consent decree. Accordingly, paragraphs 12a (2) and (3) prescribe the procedure which could be invoked in such event.

Paragraph 12a (3) provides that after the entry of a consent decree or a litigated decree *or* "after the entry of a judgment of conviction against General Motors Corporation", the Court, upon application of *any* respondent, will suspend *each* of the restraints and requirements contained in subparagraphs (d) to (f) and (h) to (l) of paragraph 6 and subparagraphs (a), (c) and (d) of paragraph 7 to the extent that such restraints are not imposed, and

until they shall be imposed in substantially identical terms, upon General Motors Corporation and its subsidiaries and General Motors Acceptance Corporation and its subsidiaries, respectively, either by (1) consent decree, or (2) a final decree of a court of competent jurisdiction not subject to further review, or (3) a decree of such court which, although subject to further review, continues effective, or (4) "by the equivalent of such a decree" as defined in subparagraph (2) of paragraph 12a\* (R. 36-37).

There is admittedly no consent decree or final decree of any court imposing *any* restraints upon General Motors Corporation or General Motors Acceptance Corporation.

Is there "the equivalent of such a decree"? The consent decree itself defines such an equivalent. Subparagraph (2) of paragraph 12a provides that "a general verdict of guilty returned against General Motors Corporation . . . shall be deemed to be a determination of the illegality of any agreement, act or practice of General Motors Corpo-

\* At the time of the decree it was contemplated that there would be further proceedings against General Motors Corporation, looking toward a decree embodying the restraints of the consent decree entered against Ford and Appellant Finance Companies. But the proceeding actually instituted against General Motors Corporation in 1940 is limited only to the question of affiliation, which is not here pertinent. Those proceedings are moreover pending and have never been brought to trial. Paragraph 12a (3) recognizes the possibility that there might be no such proceeding, and, therefore, grants Ford and Appellant Finance Companies the right to seek suspension of certain specified restraints "after the entry of a judgment of conviction" or "after January 1, 1940 (whichever date is earliest)."

It is clear that even if General Motors Corporation were convicted prior to January 1, 1940, Ford and Appellant Finance Companies would be entitled to a suspension of any of the specified subparagraphs of paragraphs 6 and 7 if a decree *or the equivalent thereof* were not obtained by the Government against General Motors Corporation. If there were no decree against General Motors Corporation embodying these restraints, we must look to the instructions to the jury in the General Motors case to determine whether there is an "equivalent", which is the point in issue here.

ration which is held by the trial court, in its instructions to the jury, to constitute a proper basis for the return of a general verdict of guilty" and that such determination of the illegality of *any* act or practice shall (for the purposes of subparagraph (3) of paragraph 12a) be considered the *equivalent* of a decree restraining the performance by General Motors Corporation of *such* act or practice (R. 35-36).

It is especially significant that subparagraph (2) of paragraph 12a refers, in the singular, to *any* act or practice, and that subparagraph (3) of paragraph 12a refers to *each* of the restraints imposed by particular provisions of the decree, in contradistinction with subparagraph (1) of paragraph 12a, which refers to *every* provision of the decree. This detailed procedure conclusively shows that the parties carefully considered the effect of a judgment of conviction in the General Motors proceeding with respect to the particular restraints imposed by the consent decree herein.

The Government's position, as stated in the Court below, rests on the erroneous assumption that its "commitment" was fully met by the conviction of General Motors Corporation (R. 175) and that the conviction itself "under a certain type of charge by the trial court to the jury was to act as the equivalent of a civil decree against General Motors enjoining exactly the same practices that are now enjoined in paragraph 6 of the Ford decree." (R. 177).

Any interpretation which would preclude the Appellant Finance Companies from seeking the relief requested on the assumption that the judgment of conviction alone is a substitute for or the equivalent of the consent decree herein would subvert the intention of the parties as clearly expressed in the consent decree itself.

Moreover, if the Appellant Finance Companies are denied the suspension sought on the theory that the general verdict of guilty returned against General Motors Corporation enjoined that company and its affiliate, General Motors Acceptance Corporation, from the practices restrained by subparagraphs 6(i), 6(k) and 7(d), then the provisions of paragraphs 12a (3) and 12a (2) are reduced to surplusage. If the parties had so intended, only paragraph 12a (1) would have been necessary, for if a conviction was obtained, then all the provisions of the consent decree would remain operative. If paragraphs 12a (3) and 12a (2) are of any significance, it is because they set up the machinery for the suspension of particular restraints "after the entry of a judgment of conviction against General Motors Corporation".

The Appellant Finance Companies readily concede that they would not be entitled to the suspension of subparagraphs (i) and (k) of paragraph 6 and subparagraph (d) of paragraph 7, if the Government had obtained a decree against General Motors Corporation and General Motors Acceptance Corporation incorporating, in substantially identical terms, the restraints embodied in those subparagraphs. Conversely, if a decree by consent or otherwise had been entered against General Motors Corporation and General Motors Acceptance Corporation, and such decree did not incorporate each of the restraints contained in subparagraphs (i) and (k) of paragraph 6 and subparagraph (d) of paragraph 7, Appellant Finance Companies would be clearly entitled to the suspension of those restraints.

**(b) The parties intended to be bound by the instructions of the Trial Court in the General Motors case and not by the evidence that might be offered, or claims asserted, by the Government.**

As provided in paragraph 12a (2), the scope of the "equivalent" of a decree against General Motors Corpora-



tion turns on the Trial Court's instructions to the jury in the criminal proceeding against General Motors Corporation. Only those *instructions* are the proper points of reference for the purposes of the motion below. It cannot be tenably maintained that *evidence* introduced in the General Motors criminal proceeding, or any claims made or asserted by the Government in that case, should be the test in determining whether there has been the "equivalent" of a decree against General Motors. Clearly, if a verdict of guilty is not the "equivalent" of a decree, *a fortiori* the evidence offered or the contentions advanced by the Government cannot be the "equivalent", thereof. If the parties so intended, they would have so provided.

Appellant Finance Companies agreed to be bound only by the Trial Court's instructions in the General Motors case. Notwithstanding the conviction in the General Motors case, or the evidence on which it was based, or the claims made or asserted by the Government in that case, if, in fact, the Trial Court did not instruct the jury that any of the acts and practices restrained by paragraphs 6(i), 6(k) and 7(d) would be a proper basis for a general verdict of guilty, then Appellant Finance Companies are entitled to the suspension of those restraints. This position is no mere technicality as the Government asserted in the Court below. Appellant Finance Companies' position rests upon a basic and unequivocal provision of the consent decree to which the Government as well as the Appellants agreed. Appellants would never have signed the consent decree except upon such an understanding.

We shall next demonstrate that the instructions of the Trial Court in the General Motors criminal case specifically stated that the acts and practices enjoined by paragraphs 6(i), 6(k) and 7(d) were proper and in no manner contrary to law.

## III.

The Trial Court in the General Motors case did not instruct the jury that the practices enjoined by the provisions sought to be suspended would support a verdict of guilty, and the Court below erred in so finding. On the contrary, the Trial Court in such instructions held that the acts and practices in question were legal and proper.

The Court below, in Finding of Fact No. 7, stated (R. 159):

“ \* \* \* the trial court in its instructions to the Jury in the criminal antitrust proceedings against General Motors Corporation, et al., held that the agreements, acts and practices enjoined in Paragraphs 6(i), 6(k) and 7(d) of the Ford decree herein, among others, constituted a proper basis for the return of a general verdict of guilty.”

To this, the Appellant Finance Companies assign error.

The parties to the consent decree agreed that, for the purpose of determining the equivalent of a consent decree against General Motors Corporation, reference should be made only to the instructions of the Trial Court in the General Motors case in the event of a conviction. The interpretation of these instructions, then, is basic to the Appellant Finance Companies' motion.

Analysis of the Trial Court's instructions to the jury in the General Motors proceeding reveals nothing that even faintly suggests it was illegal or improper for General Motors Corporation to recommend, endorse or advertise General Motors Acceptance Corporation, or for a representative of General Motors Corporation and a representative of General Motors Acceptance Corporation jointly to influence a dealer.

Indeed, the Trial Court specifically instructed the jury that it was perfectly proper for General Motors Corporation to recommend General Motors Acceptance Corporation. The Court said:

"\* \* \* it is not charged here that to recommend the use of GMAC there is anything wrong" (R. 99).

The Trial Court also stated that it was perfectly lawful and proper for General Motors Corporation and General Motors Acceptance Corporation to expound to a dealer the advantages of their product and their services, to argue the merits of their cause and to persuade or argue with the dealer to do his financing through General Motors Acceptance Corporation. The Court said:

"In Exposition one may expound the merits of that which he has to sell; he may explain its nature and by his exposition make a clear picture of what he has.

"By persuasion he may endeavor to persuade the person to whom he is talking to accept that which he has to offer.

"There is little advancement for his further progress, to argue.

"Persuasion means something softer than argument, perhaps, but he may argue with him, and argue with him the respective merits of his product and other products being offered to the person to whom he makes his offer.

"All of these are proper" (R. 100).

"... The defendants may expound the alleged advantages of GMAC; they may explain fully the characteristics of its operations, as they claim they exist; they may point out the advantages; they may expound all of those things; they may persuade; they may use persuasion in their conversations, in their communications with their dealers; they may even argue. Those things are all proper. They have a

right, as I have said, to determine to whom they shall sell their automobiles and to whom they shall not. Those things constitute no violation of the law" (R. 112-113).

If these acts were proper and legal when done, by General Motors and General Motors Acceptance Corporation (as the instructions of the Trial Court stated) how, in view of paragraphs 12a (2) and (3) of the consent decree, can they remain proscribed and enjoined when done by Ford and the Appellant Finance Companies?

If the Government had obtained a decree against General Motors which did not have injunctive provisions restraining General Motors and General Motors Acceptance Corporation from doing the acts enjoined in paragraphs 6(i), 6(k) and 7(d), but instead specifically stated that such acts were not restrained, Appellant Finance Companies would undoubtedly be entitled to have paragraphs 6(i), 6(k) and 7(d) suspended. For the same reason, where, as here, the Government has not obtained any decree against General Motors and the Government claims that there is an "equivalent" of a decree by reason of the Trial Court's instructions to the jury in the General Motors criminal case, then specific instructions that the acts enjoined by paragraphs 6(i), 6(k) and 7(d) are lawful and proper, must result in a suspension of the injunctive provisions of paragraphs 6(i), 6(k) and 7(d) of the consent decree.

It does not appear whether or not the Government asked for instructions in the General Motors criminal case that the acts and practices prohibited by paragraphs 6(i), 6(k) and 7(d) constitute a proper basis for a verdict of guilty. If no request for such instructions was made, the Government's failure to make the request is tantamount to an



admission that the acts and practices restrained would not constitute a proper basis for a verdict of guilty.

If the instructions were asked, they certainly were not given by the Trial Court. The Court stated instead that such acts and practices were perfectly lawful and proper.

In view of the fact that the consent decree was entered in November 1938 and the General Motors criminal case was tried about a year later (the conviction was on November 17, 1939), the Government should have either obtained specific instructions that the particular acts and practices enjoined by paragraphs 6(i), 6(k) and 7(d) were unlawful, or obtained a decree enjoining General Motors Corporation and General Motors Acceptance Corporation from doing the same acts.

The instructions of the Trial Court properly distinguished between practices which, as a matter of law, are proper, i.e., exposition, persuasion and argument, and those which, as a matter of law, are improper, i.e., coercion. Such a line of demarcation has long been recognized in anti-trust prosecution. See *United States v. Southern Wholesale Grocers' Association et al.*, 207 Fed. 434, 443 (D. Ala.).

The Trial Court's instruction that coercion was improper (R. 100) was not the equivalent of an instruction that the acts and practices restrained by paragraphs 6(i), 6(k) and 7(d) would constitute a proper basis for a verdict of guilty. First of all, the Trial Court had just stated in its instructions that exposition, persuasion, argument and recommendation were proper (R. 100); secondly, the legality of the particular acts and practices, restrained by the consent decree, was not intended to be tested by coercive conduct of General Motors Corporation. The parties agreed to be bound by instructions that the specific acts or practices enjoined would, as a matter of law, be stated by the Trial Court to support a verdict of guilty. Finally, no relief has been requested by Appellant Finance Companies (or by

Ford) from those paragraphs of the consent decree enjoining practices that the Trial Court in its instructions indicated were coercive. For example, the Trial Court in its instructions referred to the

“... ability to cancel, the ability to refuse to renew a contract ... as clubs upon the dealers to force them to use GMAC.” (R. 99).

The Trial Court also referred to the utilization of

“a contract which was limited to one year and might or might not be renewed and a cancellation clause in that contract upon short notice and discrimination in the shipment or non-shipment of automobiles, used ... as a club upon their dealers.” (R. 113).

No relief has been requested by Appellant Finance Companies (or Appellant Ford) with regard to the injunctive provisions against discrimination or cancellation of contracts in order to make a dealer do business with a particular finance company (R. 20-32).

To the extent that any act or practice was coercive, it was enjoined and it remains enjoined by the consent decree without application by the Appellant Finance Companies or anyone else to lift such restraints. But that is not to say that non-coercive acts—recommendation, exposition, persuasion or argument—are thereby to be forever enjoined, notwithstanding the express agreement of the parties that, in the event that certain instructions were given by the Trial Court in the General Motors case, those restraints were to be lifted.

The Trial Court, in its instructions, unmistakably held that it was lawful and proper for General Motors Corporation to recommend, and to persuade or argue with a dealer to do his financing with General Motors Acceptance Corpo-

ration. And the opinion of the Circuit Court of Appeals further emphasized that point in its review of those instructions (121 F. (2d) 376, 385):

"The Court [below] pointed out that the defendants had the right to select any dealers they saw fit, determine upon what terms to sell General Motors cars, expound the advantages of GMAC and persuade dealers to use GMAC."

#### IV.

**The practices enjoined by the provisions of the decree sought to be suspended do not constitute unreasonable restraints of trade.**

Paragraphs 6(i) and 7(d) enjoin a representative of Ford and a representative of Appellant Finance Companies from jointly influencing a dealer to do business with the finance company. Such conduct does not involve any restraint of trade in violation of the Sherman Act. Such activity does not suppress or lessen competition. To "influence" a dealer by legitimate exposition, persuasion or argument to do his financing through any finance company or companies does not constitute an unreasonable restraint of trade. It is, moreover, the traditional type of activity that manufacturers habitually pursue in connection with the sale of products that require servicing or financing.

No automobile manufacturer (other than Ford and Chrysler Corporation) distributing products sold on the installment plan is presently subject to such a restriction upon its business activities. And no company, bank or otherwise (other than Appellant Finance Companies and Commercial Credit Corporation), engaged in financing in-

stallment sales, is subject to such prohibitions. Can there be any doubt that the hundreds of manufacturers in this country whose products are financed through thousands of banks, do, in the presence of representatives of the banks, "influence" or "persuade," by legitimate argument; their dealers to do their financing through the banks?

As hereinabove stated, the Trial Court in its instructions to the jury in the General Motors criminal case stated that such conduct would not support a general verdict of guilty under the law (R. 99, 100, 112-113).

In *United States v. Southern Wholesale Grocers' Association*, 207 Fed. 434 (D. Ala.) similar lines of persuasion by argument were held proper. The Court said (p. 443):

"The contention of the plaintiff is that the Sherman Act prohibits a combination from addressing even *legitimate argument*, which may affect interstate trade relations, to an individual engaged in trade of that character. If the principle is correct, it would work the extinction of all trade organizations except for purely social purposes. Their only other valuable function is to redress trade grievances by legal methods. If *persuasion by argument*, made in good faith and without coercion, express or implied, is not open to them for that purpose, their usefulness is at an end. It will not be denied that there are real advantages to be derived from a proper kind of co-operation, not obtainable by a single individual, unaided. *It would be an unfortunate construction of the Sherman Law that would deprive individuals of the benefit and protection to be obtained from such co-operation.* The decree permits the organization to continue to exist for other than social purposes; indeed, for all purposes other than those expressly enjoined. This impliedly recognizes that it may have other useful functions which



it can legally perform. *No authority has been cited that goes to the extent contended for by the government, and I am not prepared to create one.*" (Italics supplied.)

Paragraph 6(k) enjoins Ford from recommending, endorsing or advertising Appellant Finance Companies or any other finance company. The legality of this practice was recognized by Assistant Attorney General Thurman Arnold, at the time the instant consent decree was submitted to the Court below (R. 194):

"Such a method of advertising has never been held to be violative of the antitrust laws, and the legality of its use, in the absence of positive fraud, has not been questioned.

"There are no precedents which compel the adoption of such restrictions on advertising."\*

The Trial Court in its instructions to the jury in the General Motors case, stated:

"... it is not charged here that to recommend the use of GMAC there is anything wrong" (R. 99).

If the law were otherwise, it would be necessary (assuming trade or commerce involved) to enjoin every doctor who recommends a pharmaceutical product or endorses a hospital, druggist or optician; or every real estate operator or vendor of land or chattels who recommends an insurance company to insure the property; every commercial or

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\* Likewise, Holmes Baldridge, Special Assistant to the Attorney General, stated at the same time (R. 194-195):

"It is the Department's idea, the one with respect to advertising, the other with respect to adoption of a Code of Fair Competition, that this public benefit goes far beyond anything that we could hope to accomplish in a litigated case, besides eliminating the discriminatory practices and coercion complained of by the independents in this suit."

investment bank that recommends to one borrowing from it, a lawyer; and every lawyer who recommends to his client a particular bank or bonding or surety company.

The instant consent decree must be considered in the light of its purpose: the Appellant Finance Companies were willing to be enjoined from engaging in admittedly lawful activity on condition that their major competitors would be similarly restrained. The Government's failure to obtain a similar decree against General Motors Corporation and General Motors Acceptance Corporation and their subsidiaries, although over seven years have elapsed since the institution of the Government's equity suit against those two corporations, points up the propriety of the motion below.

Suspension is sought only as to those provisions of the consent decree which restrain the practices held lawful by the Trial Court, or contained in paragraphs 6(i), 6(k) and 7(d) and as to 6(e) only to the extent that the prohibitions of 6(e) overlap the prohibitions of 6(i), 6(k) and 7(d). If the instant motion is granted, moreover, the prohibitions of subparagraphs 6(a), 6(b), 6(c), 6(d), 6(e), except as above indicated, 6(f), 6(g), 6(h), 6(j), 6(l), 7(a), 7(b) and 7(c) (R. 20-32) will continue in full force and effect. These provisions effectively enjoin all acts of coercion and exclusive arrangement. Neither Appellant Finance Companies nor Appellant Ford seek the suspension of any of the restraints pertaining to the practices condemned in the General Motors case. The Circuit Court of Appeals opinion in that case conclusively demonstrates that it was the *coercive* practices of General Motors Corporation that was the gravamen of the conviction. *United States v. General Motors Corp., et al.*, 121 F. (2d) 376, 398-99.

## V.

**Appellants are at an economic disadvantage by reason of the injunctive provisions against them and the Government's failure to obtain similar injunctions against General Motors and General Motors Acceptance Corporation.**

**(a) Prior to and at the time of the entry of the consent decree, the Government recognized that unless the General Motors group were subject to the same injunctive provisions, Appellants would be at an economic disadvantage.**

In 1937 and 1938, the Government, in a number of public statements, stated that the consenting parties would be at a distinct competitive disadvantage if the Government failed to obtain similar injunctive provisions against General Motors Corporation and General Motors Acceptance Corporation. One of these statements was made in November 1937 in a letter from the Assistant Attorney General of the United States to the Assistant General Counsel of General Motors Corporation. Assistant Attorney General Robert H. Jackson said (R. 196):

**"The decree will also contain provisions designed to protect the defendants from competitive disadvantages which they may experience in the event that the restrictions contained in the decree are not applied to their competitors."**

On November 7, 1938, Assistant Attorney General Thurman Arnold issued a press release which was approved by the Attorney General, stating (R. 198):

**"General Motors has not proposed an acceptable plan for a consent decree, and therefore the case against that group must be vigorously prosecuted."**

In the meantime the voluntary decrees proposed by Chrysler and Ford will go into effect, if accepted by the Court. However, the failure of General Motors to participate has made it necessary to insert provisions in the decrees insuring the Ford and Chrysler groups that General Motors will not be put on a favored basis in the event that the prosecution against it is unsuccessful. To do otherwise might enable General Motors to enjoy an unwarranted competitive advantage over Ford and Chrysler resulting from the voluntary cooperation of the latter companies with the government. Obviously, in view of the predominant position in the automobile field occupied by these three companies, *the Department cannot restrain two of them only, unless it subsequently succeeds in securing relief against the practices of the third.*" (Italics supplied.)\*

When the consent decree was submitted to the District Court, the following colloquy ensued between the Court and Mr. Arnold (R. 197-198):

"The Court: I wonder what possible effect that might have on the prosecution of the other defendants, to say: this shall not be effective unless you convict certain other defendants?

"Mr. Arnold: We had to do that in order to prevent the General Motors securing a competitive advantage over the other companies. They are

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\* Assistant Attorney General Thurman Arnold, in a letter dated November 5, 1938, to Phillip W. Haberman, Counsel for Appellant Finance Companies, stated in part as follows (R. 197):

"I have told you throughout our conferences that the position of the Department of Justice is that no decree under the Sherman Antitrust Act should be such as to place the defendants at a competitive disadvantage in the industry, and that the Government's policy is to enforce the antitrust laws so as to restore and maintain free competition in the industry in which such decrees are entered."



highly competitive; they have cars in the same price class, and, if General Motors can continue with the practices that the Government is opposed to, when the Ford and Chrysler must desist, it places them at a distinct competitive advantage over their competitors."

Paragraph 12a was thus avowedly designed to protect the appellants against, and relieve them from, any anticipated competitive disadvantage, and its proper interpretation lies at the root of this appeal.

By the terms of paragraph 12a (4) of the consent decree "the right of the respondents . . . to make any application for suspension of *any* provision of this decree in accordance with the provisions of this paragraph and to obtain such relief is hereby expressly granted" (R. 37-38). (Italics supplied.)

If the Appellant Finance Companies were seeking the suspension of the provisions specifically enumerated in subparagraph (ii) of paragraph 12a (3), their right to such relief would be conditioned upon proof that General Motors Corporation or its subsidiaries were *in fact* engaged in such practices. Under paragraph 12a (3) (i), however, there is no such evidentiary requirement. The familiar principle of *inclusio unius, exclusio alterius* compels the interpretation that Appellant Finance Companies need not have grounded their request for relief upon proof that General Motors Corporation or General Motors Acceptance Corporation are engaging in any of the practices enjoined by paragraphs 6(i), 6(k) and 7(d).

It is equally clear that the Appellant Finance Companies need not have made any showing that they are at an economic disadvantage by reason of the continuance of the

restraints embodied in paragraphs 6(i), 6(k) and 7(d). But, even though no such showing is necessary under the terms of the consent decree, such a showing was in fact made in the Court below.

**(b) To the extent that Ford is at an economic disadvantage as compared to General Motors Corporation, Appellant Finance Companies are at an economic disadvantage.**

Concededly, the Government has not obtained a decree, by consent or by litigation, against General Motors or General Motors Acceptance Corporation. Nor can there be any question that Ford is at an economic disadvantage in the sale of automobiles because of the injunctive provisions against Ford to which General Motors is not subjected. As a matter of fact, the record in this case shows that for the years 1940 and 1941, the volume of business in automobiles of General Motors substantially increased, while the business of Chrysler and Ford materially decreased (R. 124-a).\*

General Motors Acceptance Corporation does practically all the financing of General Motors cars. Since the volume of sales of General Motors cars increased and the volume of sales of Ford and Chrysler cars decreased, then the available market of cars which might be financed by Appellant

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\* This schedule stands uncontradicted in the record. It shows that of all passenger car registrations for the year 1938 General Motors had 44.8%, whereas Chrysler had 25% and Ford 20.5%. Although the passenger car registrations for the year 1939 did not vary greatly from 1938 (General Motors 44.7%, Chrysler 24.2%, Ford 21.4%), there was a marked change for the years 1940 and 1941, by which time the economic effect of the injunctions against Ford and Chrysler became apparent. Thus for the year 1940, the percentages of passenger car registrations were as follows: General Motors 47.6%, Chrysler 23.7%, Ford 18.9%; and for the year 1941 the percentages were as follows: General Motors 47.3%, Chrysler 24.2%, Ford 18.8%.

Finance Companies and other finance companies was decreased to their obvious economic disadvantage.\*

The facts contained in the verified moving papers (R. 195-196), which were not contradicted below, amply establish the competitive disadvantage to which the Appellant Finance Companies have been subjected by reason of these continuing restraints.

The business of the Appellant Finance Companies in the financing of Ford automobiles diminished substantially from the date of the entry of the consent decree up to the early part of 1942, when the manufacture of automobiles ceased by reason of the fact that the United States entered the war. Furthermore, thousands of commercial banks located throughout the United States, which previously were not in the automobile financing field, entered the field between the date of the entry of the consent decree and the stoppage of the manufacture of automobiles (R. 195).

Recently, twelve large banks located in twelve key cities, with total resources of more than four billion dollars, announced a National Sales Plan for the financing of retail installment purchases of automobiles and household appliances. These banks are asking thousands of other banks throughout the country to join in the plan. The Morris Plan of America has also announced that it is entering the field. On April 1, 1946, the Irving Trust Company of New

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\* While Ford is enjoined by the decree from recommending or advertising any finance company and from sending representatives with representatives of a finance company to influence a dealer, only the Appellant Finance Companies, and not other finance companies, are enjoined by paragraph 7(d) from acting jointly with Ford. Thus, only the Appellant Finance Companies (and Commercial Credit Corporation under a similar injunction in the *Chrysler* case) are subject to contempt proceedings if they act contrary to the injunctive provisions of paragraph 7(d). There is, therefore, a legal disadvantage to Appellant Finance Companies as well as an economic disadvantage.

York, with total resources of more than one billion dollars, announced that it was entering the same field (R. 195-196).

Not only is there an economic disadvantage to Appellant Finance Companies and other finance companies by reason of the economic disadvantage to Ford, but there is also a competitive disadvantage to Appellant Finance Companies inherent in their inability to develop, in cooperation with Ford, a financing plan that might be beneficial to dealers and to purchasers of automobiles. There is no prohibition against General Motors Corporation (the largest single manufacturer of automobiles in this country) working out a plan of financing, with its wholly owned subsidiary, General Motors Acceptance Corporation. Ford should not be prevented from working out, with any finance company or companies, financing plans which might be of great advantage to dealers and to purchasers of automobiles. Such a plan would be in aid of competition and possibly increase the business of competitors of General Motors Corporation.

(c) The failure of the Government to obtain injunctions, similar to those in paragraphs 6(i), 6(k) and 7(d), against General Motors and General Motors Acceptance Corporation, has the effect of discriminating against Appellants.

After the Government on November 17, 1939 obtained the conviction in the criminal case against General Motors Corporation and General Motors Acceptance Corporation, the Government on October 4, 1940 filed a civil suit against General Motors and its financing affiliate to divorce the finance company from the manufacturing company. The case has not come up for trial.

General Motors Acceptance Corporation is not only a wholly owned subsidiary of General Motors, but there is a complete identity of names. Therefore, there cannot be



any question but that General Motors Corporation in effect recommends to its dealers that the financing of General Motors cars be done through General Motors Acceptance Corporation. Similarly, there cannot be the slightest doubt that representatives of General Motors Corporation and General Acceptance Corporation jointly call upon dealers and influence them to finance through General Motors Acceptance Corporation. This is inherent in the situation due to the identity of interests and identity of names, and the dealers in General Motors automobiles, as well as the public, are fully aware of this identity.

Yet the Government, in its civil suit against General Motors Corporation and General Motors Acceptance Corporation, is seeking only divorcement and not injunctions against the acts and practices enjoined in paragraphs 6(i), 6(k) and 7(d) of the consent decree here involved. There is no reason why the Government could not have asked for similar injunctive relief in the suit against General Motors Corporation and General Motors Acceptance Corporation. In fact, the Government is not even asking for injunctions against General Motors Corporation as to actual practices enjoined by the consent decree which appellants are not seeking to have suspended.

The Government's failure in the General Motors' civil suit to ask for such injunctive relief discriminates against appellants and favors General Motors Corporation. The divorcement of its finance company from General Motors Corporation, without more, would not operate to restrain General Motors Corporation and General Motors Acceptance Corporation from the acts and practices which appellants are here restrained from doing.

Even if the Government could, in the General Motors civil case, obtain relief similar to the injunctions in this

case, the fact of the matters is that, notwithstanding the expiration of more than six years, the General Motors case has not been tried.

The net result is that General Motors Corporation still has a wholly owned finance company bearing its own name and both companies, as a practical matter, are free to do any of the acts and engage in any of the practices which the Government claims appellants should continue to be enjoined from doing.

(d) The holding in the case of *Chrysler Corporation v. United States* (316 U. S. 556), is not applicable here.

The Government will probably rely on the case of *Chrysler Corporation, et al. v. United States*, 316 U. S. 556, decided by a divided court in 1942. In that case, the consent decree, entered into by Chrysler Corporation simultaneously with the consent decree here involved, was before this Court on an entirely different question than is raised by the appeal of Appellant Finance Companies. In the *Chrysler* case, the Government, on its motion, sought to extend beyond the time fixed in the consent decree, namely, January 1, 1941, the prohibition against Chrysler Corporation's acquiring an interest in a finance company. The Government obtained an order in the District Court extending the injunction against affiliation to January 1, 1942, and then, by second order, until January 1, 1943. The position of the Government was that the extension for two years of the injunction against Chrysler Corporation's obtaining an affiliate was necessary until there was a decision in the Government's civil suit against General Motors.

A majority of four Justices of this Court upheld the extension of the period against an affiliation.

In reaching this conclusion, Mr. Justice Byrnes said in part (p. 564):

"Moreover, we cannot be blind to the fact that the complete cessation of the manufacture of new automobiles and light trucks has drastically minimized the significance of the competitive factor. Consequently, there is no warrant for disturbing the finding of the court below 'that further extension of the bar against affiliation will not impose a serious burden upon defendants.'"

In the present case, Appellant Finance Companies are invoking the terms of the decree itself. They ask the Court to look to the instructions to the jury in the General Motors case, which show that the Government did not obtain the "equivalent" of a decree against General Motors Corporation or General Motors Acceptance Corporation.

Furthermore, as this record shows (without any contradictory proof), since the termination of hostilities in August 1945, automobiles and trucks have been manufactured by Ford. Also, the financing of automobiles has been revived under changed economic and competitive conditions (R. 195-196). None of these factors existed in the *Chrysler* case.

\* Earlier in the opinion Mr. Justice Byrnes said (p. 563):

"The District Court found 'that the Government has proceeded diligently and expeditiously in its suit to divorce General Motors Acceptance Corporation from General Motors Corporation.' There is room for argument that this statement is markedly generous to the Government, inasmuch as the civil suit against General Motors was not instituted until almost two years after the entry of the consent decree and only three months prior to the limiting date in paragraph 12."

The decision of this Court in the *Chrysler* case was on June 1, 1942, and up to the present time there has been no trial of the issues in the General Motors case.

Just as Ford is faced with the economic fact that its largest competitor, General Motors Corporation, has its own wholly owned financing subsidiary, and therefore has an economic advantage, so Appellant Finance Companies are faced with changes in economic and competitive conditions (R. 195-196).

In the *Chrysler* case the prohibition against affiliation would have lapsed for all time without any procedure, under the consent decree, for reinstatement. Here, Appellants are merely asking for the suspension of the restraints because of the Government's failure to date to obtain a decree, or the equivalent of a decree, against General Motors and General Motors Acceptance Corporation.

Therefore, the Appellant Finance Companies should be free from injunctive provisions that place them at an unfair competitive disadvantage, unless and until, as was the stipulation between the parties, similar injunctive provisions are obtained by the Government against General Motors Corporation and General Motors Acceptance Corporation.

### Conclusion.

This appeal raises the question whether this Court will require the Government to observe a solemn contractual obligation which is an integral part of the antitrust consent decree. Since the Government has not obtained substantially identical injunctions against General Motors and General Motors Acceptance Corporation, as was contemplated by the consent decree, and since the Government did not obtain the "equivalent" of such injunctions (i.e., instructions in the General Motors criminal case that the acts and practices enjoined by paragraphs 6(i), 6(k) and 7(d) would constitute the basis for a general verdict of guilty), this Court should now direct that the motion of the Appel-



lant Finance Companies be granted; otherwise, Appellants are at an economic disadvantage, as the Government in 1938 recognized they would be, because the Government failed to fulfill its commitment as provided in the consent decree.

Therefore, we submit that the order of the Court below should be reversed and the case remanded with appropriate directions to grant Appellant Finance Companies' motion to suspend the provisions of paragraphs 6(i), 6(k) and 7(d), and such parts of paragraph 6(e) as would be necessary, until substantially identical restraints are imposed by decree upon General Motors Corporation and General Motors Acceptance Corporation.

Respectfully submitted,

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*Of Counsel:*

SEYMOUR KLEINMAN.

March 10, 1947.

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1948

No. 1

FORD MOTOR COMPANY,

vs.

THE UNITED STATES OF AMERICA,

*Respondent,*

No. 2

COMMERCIAL INVESTMENT TRUST CORPORATION,  
COMMERCIAL INVESTMENT TRUST, INC., UNIVERSAL  
CREDIT CORPORATION, ET AL.,

vs.

THE UNITED STATES OF AMERICA,

*Respondent.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE NORTHERN DISTRICT OF INDIANA

**REPLY BRIEF OF APPELLANTS**

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October 1, 1948.

IN THE  
**Supreme Court of the United States**  
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No. 1

FORD MOTOR COMPANY,

*Appellant,*

*vs.*

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COMMERCIAL INVESTMENT TRUST CORPORATION,  
COMMERCIAL INVESTMENT TRUST,  
INC., UNIVERSAL CREDIT CORPORATION,  
ET AL.,

*Appellants,*

*vs.*

THE UNITED STATES OF AMERICA,

*Respondent.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED  
STATES FOR THE NORTHERN DISTRICT OF INDIANA

**REPLY BRIEF OF APPELLANTS**

Since the Government has filed a joint brief, covering both the above cases, we shall do the same in this reply.

For convenience, we shall follow the Government's arrangement of its argument, dealing first with the ques-

tions under paragraph 12a of the decree, which affect the rights of appellants in both Nos. 1 and 2 to suspension of the restraints imposed by paragraphs 6(i) and (k) (and in part by 6(e)) and 7(d) which have been referred to in the original briefs as the "restraints against persuasion"; and second, the right of the appellant, Ford, in No. 1 to be relieved of the restraints in paragraph 12 of the decree which have been referred to as the "bar against affiliation".\*

## I.

### THE RESTRAINTS AGAINST PERSUASION.

The Government's brief reveals a complete misapprehension of the meaning of paragraph 12a of the decree. Its mistake is so patent and glaring as to make most of its argumentation actually irrelevant.

It is incontrovertible that the essentials which control the issue of appellants' rights to suspension of the restraints against persuasion are these:

1. The decree should impose no restraints on Ford and CIT which are not imposed on the larger and strongly entrenched GM and GMAC.

2. The test, for purposes of paragraph 12a, of whether any restraint, imposed on Ford or CIT in the relevant subdivisions of paragraph 6 was also "imposed" on GM and GMAC is whether the conduct en-

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\*Feeling that the Court will not be moved by the inflammatory and factually unfounded statements, or the irrelevant arguments, contained in the brief *amicus curiae*, and that the few relevant arguments are adequately covered in our reply to the Government's brief, we have not deemed it necessary to make any specific answer to the *amicus* brief.



joined by the particular restraint in question was held by the trial court in the GM criminal prosecution, in its instructions to the jury, to constitute a proper basis for the return of a general verdict of guilty.

3. The trial court's instructions drew a sharp line between coercion of the dealers, on the one hand, and non-coercive "exposition", "persuasion", "argument" and "advertisement", on the other, holding the former to be illegal and all of the latter to be "proper".

The Government nowhere controverts in terms the bases of the appellants' interpretation of paragraph 12a as developed in their original briefs. But, as we show in the ensuing argument, it makes a succession of points which could be pertinent only if premised on an assumption that the paragraph means something different from what it says.

The gist of the criminal charge against GM and GMAC was that they engaged in the (several acts alleged in the indictment in order to "force" the dealers selling GM cars to use the financing facilities of GM's affiliate GMAC instead of those of any other finance company (R. 94-101; Govt. Br. 2). The verdict of the jury in the GM case meant that GM and GMAC had engaged in those practices with that purpose and effect. The indictment against Ford and CIT was never tried; it was dismissed in view of the Consent Decree here in question. What would have been the evidence in that prosecution had it been tried, and what would have been the verdict, can never be known. Manifestly, therefore, the test of whether Ford and CIT were to be restrained from any particular practice alleged in the GM indictment could not fairly be whether GM and GMAC

had been guilty of coercion and duress against the dealers. The Government was satisfied (Decree, par. 12a(1), R. 35) that, if the GM prosecution did not result in a conviction, all the injunctions against Ford and CIT should be suspended until substantially identical restraints and requirements should be imposed on GM and GMAC. But if GM were convicted, *the test was to be what the trial judge in the GM case held in his instructions to the jury to be illegal conduct* (par. 12a(2), (3)).

For purposes of applying this test, there is no need to differentiate between paragraphs 6(i) and 7(d) (R. 23, 32) relating to joint solicitation of dealers by representatives of Ford and CIT or any other finance company, on the one hand, and 6(k) (R. 30) enjoining Ford from recommending, endorsing or advertising CIT or any other finance company, on the other. Joint solicitation is but one form of persuasion, just as advertising, recommendation, exposition and argument are other forms. It was so treated in the GM case. The GM indictment did not mention joint solicitation, and the trial court did not refer to it in terms in its charge to the jury. And, since GMAC as well as GM was a defendant in that case, the following passage (R. 112) is an indication of the judge's view that it presented no problem different from the fundamental distinction between coercion and persuasion:

"I think I said to you yesterday that the *defendants* may expound the alleged advantages of GMAC; *they* may explain fully the characteristics of its operations, as *they* claim they exist; *they* may point out the advantages; *they* may expound all of those things; *they* may persuade; *they* may use persuasion in their conversations, in their communications with

their dealers; *they* may even argue. Those things are all proper."\*

Of course a visit to a dealer by representatives of the manufacturer and a finance company jointly may be coercive in character; and again it may not. So may, or may not, be a talk by a representative of the manufacturer alone with the dealer. Whether or not either is coercive depends upon all of the circumstances, including not only what is said but the setting surrounding what is said.

The Government's brief (pp. 25-26) accuses us, quite erroneously, of relying upon "isolated" portions of the charge "apart from their context", and of ignoring the "impact" of the charge "when considered in its entirety". Ford's original brief (p. 33) expressly relied upon the instructions "taken as a whole" and (p. 22) encouraged this Court to read the instructions through to determine whether our interpretation of them "viewed as a whole" is a fair one. Actually it is the charge as a whole upon which we chiefly rely, since it presents most clearly the controlling issue which the trial judge submitted to the jury,—the question of what constitutes coercion or duress. That is the heart of the charge. The distinction between coercion, on the one hand, and exposition, persuasion, argument and advertisement, on the other, is the main stream of the trial court's presentation, to which his particular applications and illustrations are tributary.

Of course, we have emphasized in our quotations those portions of the charge which held the things restrained in paragraphs 6(i) and (k) and 7(d) to be innocent and proper. They are of the utmost significance in interpreting

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\*All italics in quotations in this brief are ours.

the charge as a whole. But it is not, as the Government appears to suppose (Govt. Br. 28), our obligation to show that the trial court affirmatively approved the practices here in question. It is rather the Government's burden to demonstrate that the particular restraints of which appellants seek suspension were held by the trial court to be a proper basis for a general verdict of guilty. That is the test of whether the particular restraint has been "imposed" on GM and GMAC. And the decree says that it must be so imposed "in substantially *identical* terms".

Paragraphs 6(i) and (k) and 7(d) in the decree deal with recommendations, endorsements, advertisements or joint solicitations, as such, and regardless of circumstances. This is manifest, not only from the words of those subdivisions themselves, but by reading them alongside of other restraints in the decree which appellants here have never contended should be suspended, especially paragraphs 6(f) and (h). The judge in his instructions (R. 113) summarized the charge in the indictment as being that GM utilized the contracts with the dealers which were limited to one year "and might or might not be renewed", the cancellation clauses in those contracts, and "discrimination" between dealers in the shipment or non-shipment of automobiles, as a "club" upon its dealers and thereby "coerced them to use something which they, as free agents, would not have used". He added that "this coercion, this misuse" has proceeded, according to the indictment, "*beyond* exposition, persuasion and argument". Paragraphs 6(f) and (h) of the decree restrain practices which fall on the wrong side of the line which the trial court drew. The former says that Ford shall not deny "or threaten to deny" to any dealer any service or facility or "discriminate" among its dealers



for the purpose of influencing a dealer to patronize a particular finance company. And the latter says that Ford must not cancel any dealer contract "or threaten to do so" because of the failure of the dealer to patronize a particular finance company. Thus, Ford is effectively enjoined from any recommendation, endorsement or advertisement or any joint solicitation which, by reason either of its content or the circumstances surrounding it, is coercive in nature. Ford makes no claim that it should not be. But paragraphs 6(i) and (k) and 7(d) deal with matters that fall on the right side of the trial court's line. They relate to joint visits and recommendation, endorsement and advertisement, without more, and even in circumstances which would not permit any inference of coercion.

Nowhere in its brief does the Government expressly gainsay the above propositions. Instead it says (Govt. Br. 29):

"If, under all of the instructions given, the jury [in the GM case] had found that the acts charged and proved constituted nothing more than 'recommendations', or 'persuasion', or 'exposition', or 'argument', the only alternative would have been to return a verdict of acquittal".

That concession should end the case. But the Government advances a series of arguments which would have no relevance at all, except upon an assumption that the plainly correct proposition stated in the concession is incorrect.

The first is in subdivision "A" of Point I of the argument (Govt. Br. 25-32). The point heading is, in substance, that the trial court instructed the jury that the practice by GM of recommending, endorsing and advertising GMAC, as well as joint solicitation of the dealers by agents

of GM and GMAC, constituted, "along with other practices", a proper basis for a verdict of guilty.

The phrase "along with other practices" is the giveaway. It is implicit recognition that "other practices" (according to the trial court's charge, coercive practices) must occur along with recommending, endorsing, advertising or joint visits before a verdict of guilty would be justified. The necessary interpolation of the quoted phrase thus vitiates the pertinence of the Government's whole argument in this subdivision.

The Government (Govt. Br. 28-29) goes on to argue that, under the instructions given, the jury returned a general verdict of guilty [against GM]; and hence must have found that the conduct [of GM] "charged and proved" went beyond mere "recommendation", "persuasion", "exposition", and "argument" and constituted "coercion". All this is also completely irrelevant. The right of Ford and CIT, under paragraph 12a of the decree, to a suspension of the restraints against persuasion, was not to be judged by the guilt of GM under the evidence adduced in the criminal case. Under paragraph 12a(3) the court, upon application, "will" enter orders suspending these, among other, restraints to the extent that they are not "imposed", and until they shall be imposed "in substantially identical terms", upon GM. By the same provision, such "imposition" must be by decree or (R. 37) by the "equivalent" of a decree as defined in clause (2) of this paragraph. And under 12a(2) the *sole* measure of the "equivalent of a decree" is not what the evidence proved against GM, or what the jury found against GM, but the instructions of the trial court.

The argument (Govt. Br. 29-30, including footnote 14) concerning joint solicitation is a glaring example of the

fallacy which permeates the Government's brief. Its reliance is not on the trial court's charge but upon the evidence of the coercive character of the joint visits which the Government proved against GM and GMAC, and the summary of that evidence in the opinion of the Circuit Court of Appeals.

The Government merely begs the question in persistently using phrases implying that Ford will attempt to "dictate" the concern with whom dealers may finance cars (Govt. Br. 41, 45), that Ford will "control" the whole process of distribution (*id.* 42), that Ford will "insist" that its dealers use the services of a particular finance company (*id.* 43), or that CIT will be "forced" on Ford dealers (*id.* 45).<sup>\*</sup> Ford would not be able to do any of these things by reason of the suspension of the restraints in paragraphs 6(i) and (k) and 7(d). Other provisions of the decree would effectively prevent it. All it could do would be to recommend, endorse, advertise and make joint solicitations. It would not even necessarily mean that Ford would recommend or endorse CIT. Ford might well recommend some other finance company or a group of such companies. But, if Ford should determine that CIT had the plan best suited

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<sup>\*</sup>The Government aggravates such unfounded implications by use of such phrases as "affiliated" finance company or "factory-affiliated" finance company in a context that implies such relationship between Ford and CIT (*e.g.* Govt. Br. 2, 7, 8, 9). In the first place, as shown in CIT's main brief (p. 7 and footnote), Ford has no stock interest in or affiliation with any of the appellant finance companies. In the second place, paragraphs 6(i) and (k) restrain Ford not only with respect to CIT but with respect to any finance company.

It is reasonably inferable that Ford is not prepared to contract an affiliation with CIT. If it were, it could easily get relief from the bar against affiliation, under the decision of the court below, by proposing a plan to that end.

to further the sale of Ford cars, Ford should be free to recommend CIT, and CIT should be entitled to receive the recommendation.

Under subdivision "B" of Point I (Govt. Br. 32-37), the Government relies on the dealer's supposed "ready susceptibility to factory influence" to support the argument that factory recommendations and joint solicitation necessarily constitute "coercion" and hence violate the Sherman Act. The assumption in the phrase first quoted is wholly without foundation in the record; and the sole support of it in the Government's brief is references to the evidence in the GM case (footnotes 16, 17 and 18; and the cross-references therein to prior footnotes, are wholly to that case) and the terms of the typical dealer contract, the use of which for purposes of coercion will, as we have shown, continue to be effectively enjoined under paragraphs 6(f) and (h) of the decree.

The Government inquires (Govt. Br. 36) what appellant, Ford, means by the term "persuade". Certainly Ford does not mean persuasion with a threat to enforce it by visiting upon the dealer cancellation of its license, failure to renew it or other discrimination. Paragraphs 6(f) and (h) enjoin such things, and Ford seeks no relief from them.

The Government further says (*id.* 36) that "the difference between a threat and 'persuasion' may involve such finely-drawn subtleties of language and conduct as to make the two indistinguishable". But paragraph 12a, making the test of suspension what the trial judge instructed the jury, together with his instructions, presupposes that recommendations, endorsements and advertisements by Ford, and joint solicitations by Ford and CIT, are not necessarily coercive. Moreover, the law is full of analogous instances



in which courts and juries must draw lines just as fine to determine whether conduct is legal or illegal. An example is *Thomas v. Collins*, 323 U. S. 516, where this Court considered a Texas statute requiring that labor organizers register before soliciting memberships in labor unions. The majority opinion said (p. 537-538):

"Accordingly, decision here has recognized that employers' attempts to persuade to action with respect to joining or not joining unions are within the First Amendment's guaranty. *Labor Board v. Virginia Electric & Power Co.*, 314 U. S. 469. \* \* \* When to this persuasion other things are added which bring about coercion, or give it that character, the limit of the right has been passed."

Much the same question is presented by Section 8c of the National Labor Relations Act (as added by the Labor Management Relations Act of 1947, 61 Stat. 140, 29 U. S. C. A. § 158(c)) providing "that the expression or dissemination of any views, argument or opinion shall not be an unfair labor practice 'if such expression contains no threat of reprisal or force or promise of benefit'". The cases cited in the Government's brief (pp. 36-37) are inapposite. The first two are of the sort referred to in the last sentence of the passage of this Court's opinion above quoted; one of them is cited in a footnote to that sentence. The other cases cited by the Government are distinguishable as involving duress, threats or other conduct plainly denounced by the Sherman Act.

The Government's further contention (Govt. Br. 37) that even conduct in itself lawful may become unlawful when directed toward achieving an unlawful purpose and pursued along with other means which are clearly unlawful,

is irrelevant. This is not a case for the framing of a decree to prevent the recurrence and dissipate the effects of an adjudicated violation of the Sherman Act. It calls simply for interpretation of carefully considered language in a decree, agreed upon and entered without evidence, findings, or adjudication of guilt, nearly ten years ago.

The Government concludes the tortuous thread of inadmissible assumptions and question-begging which constitutes its argument under this subdivision with the following sentence (Govt. Br. 37):

"But whether the conduct enjoined by Paragraph 6(i), 6(k), or 7(d) of the decree be considered lawful or unlawful when viewed in isolation, or whether it be considered as unlawful because used to further an illegal purpose, the issue of legality was foreclosed when the conditional decree became absolute by the return of a general verdict of guilty against the General Motors Group under appropriate instructions to the jury, and the court below so found (R. 158-160)."

We can think of no comprehensible interpretation of this sentence except that it contends that the jury's conviction of GM settles everything. Actually, of course, it settled nothing which is at issue in this case. If the jury had not convicted GM, the entire decree against Ford and CIT, except paragraph 12a itself, would forthwith have become inoperative and been suspended (R. 35). It is only because GM *was* convicted that the questions involved in these cases regarding restraints on persuasion arise. Those questions are controlled solely by the terms of paragraph 12a. And the Government's brief leaves our argument on the true interpretation of that paragraph substantially untouched.

The remaining subdivision "C" (Govt. Br. 38-45) is devoted to supporting the trial court's finding No. 10 (R. 159) that Ford and CIT are not laboring under any competitive disadvantage with GM and GMAC by reason of the restraints contained in paragraphs 6(i) and (k) and 7(d) of the decree, and to contending, contrary to appellants' argument, that such a showing is a prerequisite to suspension of such injunctions. The factual argument on competitive disadvantage is sufficiently covered in the main briefs of Ford and CIT.

The Government's argument regarding the bearing of a factual showing of competitive disadvantage on the right to suspension of the restraints against persuasion is completely unsound. The case of *Chrysler Corporation v. United States*, 316 U. S. 556, relied upon by the Government (Govt. Br. 40-41), had nothing to do with paragraph 12a of the decree. It was concerned solely with the bar against affiliation, governed by paragraph 12 of the decree, which, as we have shown in the main briefs, is so different in origin and structure from paragraph 12a that this Court's reasoning in the *Chrysler* case is not even applicable by analogy to the issue under the latter paragraph. (And see 316 U. S., pp. 558, 559).

In the *Chrysler* case the Court extended its aid to prevent the permanent forfeiture of a restraint by reason of a short lapse of time. Under paragraph 12a there is no possibility of a permanent forfeiture, since that paragraph provides for re-imposition of the restraints against Ford and CIT in the event that they are subsequently imposed on GM and GMAC.

Implicit in these provisions was the equally manifest conception that competitive disadvantage would be inherent in a situation in which the larger and strongly-entrenched

GM and GMAC had a greater freedom of competitive action than Ford and CIT. This conception is evidenced by the statements made by Assistant Attorney General Thurman Arnold contemporaneously with the negotiation and entry of the Consent Decree (CIT Br. 41-43). The inherent competitive disadvantage is by no means merely theoretical. The consequences of the existing situation are severely practical.

Contrary to the Government's assertion (Govt. Br. 38), GM is not presently restrained, by virtue of the judgment of conviction in the criminal case, from endorsing, recommending or advertising its affiliate GMAC or arranging joint visits to dealers with it, in the absence of coercive features. In view of the instructions of the trial judge in the criminal case, neither the conviction nor its affirmation by the Circuit Court of Appeals would be *res adjudicata* in such a case. GM has no decree against it enjoining these things so as to be subject to contempt proceedings. Even if GM and GMAC were to do these things in circumstances from which a question of coercion might arise, the only risk they would run would be that of being attacked in a new criminal or civil case. Ford and CIT will be under the same hazard even if the restraints against persuasion in this decree are suspended. But Ford would *now* be subject to contempt proceedings if it said or did anything that might reasonably be construed as an endorsement, recommendation or advertisement either of CIT or of any other finance company, and both Ford and CIT would be in contempt if they made any joint visit to a dealer for the purpose of influencing his patronage, no matter how clear were the facts that nothing of any coercive character had been done, said or implied.



Our contention is not that the competitive disadvantage now suffered by Ford and CIT under paragraphs 6(i) and (k) and 7(d) is irrelevant to the purpose of paragraph 12a. It is rather that, under the express terms and clear intendment of that paragraph, it is not incumbent upon them to make a showing akin to one of "special damages" flowing from the inequality with GM and GMAC, such as particulars of loss of business and the like.

## II.

### THE BAR AGAINST AFFILIATION.

We find it necessary to add but very little to the discussion of paragraph 12 of the decree in the original brief of the appellant, Ford, in No. 1. Ford is alone concerned with the affiliation question.

The Government contends (Govt. Br. 50) that the decision of this Court in *Chrysler Corporation v. United States*, 316 U. S. 556, disposes "of all questions here raised except whether the court below erred in holding that Ford had not shown that it was under a competitive disadvantage by reason of being barred from affiliation with a finance company".

We do not agree. We submit that "competitive disadvantage" is not, under that decision, "the controlling factor" in this case, as the Government insists (Govt. Br. 50). In the *Chrysler* case (316 U. S., p. 563) the majority considered the finding of the District Court that the Government had proceeded diligently and expeditiously in its suit to divorce GMAC from GM and concluded that the finding "was not unreasonable", although pointing out that there was "room for argument" that such finding was "markedly

generous to the Government". The majority then said (*id.*): "The controlling factor *thus*, becomes whether the extension of the ban on affiliation contained in paragraph 12 places Chrysler at a competitive disadvantage." The majority made it perfectly clear that the Government might lose "its right to *seek* a modification of the decree" by not proceeding "diligently and expeditiously" in its suit to divest GMAC from GM, and that in such event the existence or absence of competitive disadvantage would be immaterial. And so, even if the reasoning of the *Chrysler* decision were to be adhered to, the Government must here show diligence before the question of competitive disadvantage arises.

We have shown in Ford's main brief (Ford Br. 61-64) that the Government has not been diligent in its suit to divest GMAC from GM. The Government says (Govt. Br. 53) that "In the affidavit supporting our motion in the court below (R. 69-70)\* we detailed the steps taken subsequently" to January 15, 1942. That is not the case. What the affidavit says is (R. 69) that "The plaintiff represents that it has proceeded with due diligence *since* the Court's order of December 31, 1944 \* \* \*." And the activities to which the Government refers in its brief (Govt. Br. 53-54) all took place subsequent to December 31, 1944. The Government thus passes over the period of approximately three years from January 15, 1942 to December 31, 1944, and the record contains nothing to show what, if anything, the Government did during that period to bring about the divestment of GMAC from GM.

We should now add that it is nearly three years *since* the Government said in the affidavit referred to (R. 70)

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\*Filed in December, 1945 (R. 72).

that "it has exercised due diligence and will continue to exercise due diligence in securing an early trial date" of that case. No trial date has yet been set.

It is now over six years since this Court found, with obvious misgivings, in the *Chrysler* case, that the Government had not been unduly lacking in diligence in its prosecution of the GM civil case. A restraint on affiliation imposed nearly ten years ago has remained in effect nearly eight years longer than the time specified in the decree for its automatic cancellation.

We submit, therefore, that the Government has failed to show that it "has proceeded diligently and expeditiously in its suit to divorce General Motors Acceptance Corporation from General Motors Corporation", and accordingly has "lost its right to seek a modification of the decree" herein.

But, if this Court should not accept this interpretation of the *Chrysler* decision, we contend that Ford (Ford Br. 46-50, 64-66) has made a sufficient showing of competitive disadvantage from the bar against affiliation to satisfy this Court's requirements, even assuming *arguendo* that the inherent disadvantage of not being permitted to affiliate with a finance company, while GM retains its affiliation with GMAC, be not enough (see *supra*, p. 14). This Court said (316 U. S., p. 563) that Chrysler made "no showing" of competitive disadvantage in the District Court. It pointed out (*id.*, p. 564) that Chrysler had requested a continuance to February 16, 1942 in order to produce further evidence, but at that date no evidence was forthcoming. Certainly Ford is in no such situation. The factors of competitive disadvantage stated in Ford's petition (R: 89-90) and the facts adduced in the supporting affidavits (R. 118-125) are co-

gent and circumstantial. They are by no means limited, as the Government would have this Court believe (Govt. Br. 51), to evidence that Ford's percentage of participation in the total car market has decreased during the period in which the injunction against affiliation has been operative.

But, more importantly, the *Chrysler* case throws no significant light upon what this Court would consider sufficient as competitive disadvantage under the conditions of today. Since Chrysler had made no evidentiary showing, this Court had to deal with the question whether, as of 1942, the disadvantage inherent in being restrained from contracting any affiliation with a finance company, while GM had not been divested of its affiliated company, was enough. This circumstance makes of controlling importance this Court's statement:

"Moreover, we cannot be blind to the fact that the complete cessation of the manufacture of new automobiles and light trucks has drastically minimized the significance of the competitive factor." (316 U. S., p. 564)

This Court should not now be "blind" to the common knowledge that production of new automobiles and light trucks was resumed some years ago and that GM, Ford and Chrysler are in most energetic competition in everything that affects the marketability of their products. We submit that in the present drastically changed competitive conditions, the question, whether the competitive disadvantage which is inherent in the restraint against affiliation is not enough, should be regarded as open. Everything said in the dissenting opinion (316 U. S., pp. 564-571), becomes apposite. At the very least, even if some special factual showing of competitive disadvantage be still required, there is no need that it be as detailed and comprehensive as



would have been the case when new automobiles and light trucks were not being manufactured.

Thus the position of the appellant, Ford, is that the *Chrysler* case is distinguishable from the present case. If this Court should disagree, Ford respectfully requests its reexamination of that decision.

Respectfully submitted,

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October 1, 1948.

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# **In the Supreme Court of the United States**

**OCTOBER TERM, 1946**

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**No. 643**

**FORD MOTOR COMPANY, APPELLANT**

**v.**

**UNITED STATES OF AMERICA**

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**No. 644**

**COMMERCIAL INVESTMENT TRUST CORPORATION, COM-  
MERCIAL INVESTMENT TRUST, INC., UNIVERSAL  
CREDIT CORPORATION, ET AL., APPELLANTS**

**v.**

**UNITED STATES OF AMERICA**

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**ON APPEAL FROM THE DISTRICT COURT OF THE UNITED  
STATES FOR THE NORTHERN DISTRICT OF INDIANA**

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**BRIEF FOR THE UNITED STATES**

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**OPINION BELOW**

The District Court rendered no opinion. Its findings of fact and conclusions of law are found at R. 157-161.

**JURISDICTION**

The decree of the District Court was entered on July 25, 1946 (R. 161-162). Petition for

appeal in No. 643 was filed on September 17, 1946 (R. 162), and allowed on September 18, 1946 (R. 169). Petition for appeal in No. 644 was filed on September 16, 1946 (R. 206), and allowed on September 18, 1946 (R. 213-214).

The jurisdiction of this Court is conferred by Section 2 of the Act of February 11, 1903, 32 Stat. 823, 15 U. S. C., Sec. 29, and Section 238 of the Judicial Code as amended by the Act of February 13, 1925, 43 Stat. 936, 938, 28 U. S. C., Sec. 345. Probable jurisdiction was noted on November 12, 1946 (R. 222-223).

#### QUESTIONS PRESENTED

In 1938, three indictments were returned against the three largest motor car manufacturers, Ford, Chrysler, and General Motors, and their respective affiliated finance companies, charging violations of the Sherman Act. Each indictment charged that the factory and its affiliated finance company had conspired to force the dealers selling cars of such manufacturer to use the financing facilities of the affiliated finance company at both wholesale and retail. The effect of such practices was to prevent the dealers, who were not agents but independent contractors, from exercising an independent choice of finance mediums and to discriminate against non-affiliated finance companies competing for the dealers' business.

Ford and Chrysler settled by submitting to decrees which enjoined the coercive and discriminatory practices and prohibited them from owning an interest in a finance company. General Motors elected to stand trial. In order that Ford and Chrysler should not be placed at a competitive disadvantage certain provisions of the decrees, while presently effective, were subject to the following conditions:-

1. All of the injunctive features were to be suspended unless the Government convicted the General Motors Group in the then pending criminal case by January 1, 1940. Conviction was secured on November 16, 1939. This conviction was sustained on appeal. Certain of the injunctive features, including those relating to factory recommendation and endorsement of a particular finance company, as well as that relating to joint solicitation of dealers by agents of the factory and a factory-preferred finance company, were to be suspended unless the trial court in instructing the jury in the *General Motors* criminal case included such activities among those agreements, acts, and practices which would justify the return of a general verdict of guilty. Appellants filed motions seeking suspension of these particular provisions on the ground that the trial court had instructed the jury that such conduct was lawful and proper.

2. The bar against affiliation was to be lifted unless the Government succeeded in divorcing General Motors Corporation from its affiliated finance company by January 1, 1941. Suit was filed but was not concluded by that date. Annual extensions of the bar against Ford's affiliation were secured by consent until January 1, 1946. At that time the Government filed a motion to extend the time for another year, or until January 1, 1947, and Ford filed a motion asking that the bar be lifted permanently.

The District Court, after hearing, denied appellants' motions to suspend the two injunctive provisions of the decree. It granted the Government's motion to extend the bar against affiliation to January 1, 1947, and denied appellant Ford's motion to lift the bar permanently. The question presented, therefore, is whether the District Court was correct in so ruling.

#### STATUTE INVOLVED

The Act of July 2, 1890, 26 Stat. 209, commonly known as the Sherman Act, as amended by the Act of August 17, 1937, 50 Stat. 693, provides in part as follows:

SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal  
\* \* \*. Every person who shall make any contract or engage in any combination or



conspiracy hereby declared to be illegal shall be guilty of a misdemeanor \* \* \* (15 U. S. C., Sec. 1.)

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor \* \* \* (15 U. S. C., Sec. 2.)

\* \* \* \* \*

SEC. 4. The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations \* \* \* (15 U. S. C., Sec. 4.)

#### STATEMENT

##### PRIOR PROCEEDINGS IN THE CASE

A brief review of the Government's antitrust proceedings directed to the elimination of trade restraints in the automobile financing field is essential to a clear presentation of the issues now before this Court. On May 27, 1938, three indictments<sup>1</sup> charging violations of the Sherman Act

<sup>1</sup> The three indictments were identical except for the parties named as defendants. The indictment against the General Motors Group is found at R. 135-151.

were returned in the District Court of the United States for the Northern District of Indiana, South Bend Division. One was against appellants here, Ford Motor Company (hereinafter referred to as Ford); Commercial Investment Trust Corporation, Commercial Investment Trust, Inc., and Universal Credit Corporation (hereinafter collectively referred to as CTT); one against Chrysler Corporation and certain affiliated finance companies; and one against General Motors Corporation and certain affiliated finance companies.

Each indictment charged the respective defendants with conspiring to monopolize the business of financing the sale of automobiles, both new and used (R. 144), by forcing and inducing dealers handling the cars of the respective manufacturers to use the financing facilities, both in making wholesale purchases and retail sales, of the finance companies affiliated with the respective manufacturers (R. 144-149). Each indictment charged that because of the high unit price of cars, as well as the manufacturer's requirement that all cars be paid for in cash before shipment to the dealers, large sums of money were regularly and continuously required to finance purchases by dealers (R. 138); and that large sums of money were necessary also to permit retail purchasers to buy cars on a time sales basis (R. 141).

Among the means alleged to have been used to compel dealers to use such financing services

were: cancellation of dealers' contracts to sell cars and threats to cancel such contracts; the making of such contracts for a period of one year only subject to cancellation on short notice and without cause; conditioning the making of such contracts on the dealer's promise to use the financing facilities of the factory-affiliated finance company; discriminating against non-cooperative dealers by shipping cars which were not ordered during periods of overproduction and refusing to ship cars during periods of short supply, shipping cars of different type, style, and design from those ordered, shipping excessive quantities of parts and accessories; advertising, endorsing, recommending, and promoting the financing facilities of the factory-affiliated finance company; and using any and all other means deemed necessary (R. 144-149). As a result of such practices the dealers were deprived of a free choice of finance companies, even though they were not agents of the factory but were independent contractors.<sup>2</sup>

<sup>2</sup> In affirming the conviction of the General Motors Group, the Seventh Circuit Court of Appeals in *United States v. General Motors Corporation*, 121 F. (2d) 376, certiorari denied, 314 U. S. 618, said: "These dealerships constitute independent economic units with an invested capital owned by the dealers" (p. 386). In speaking of factory control of such dealers the court said that "The inevitable conclusion on this record is that although General Motors Corporation and General Motors Sales Corporation have rejected the dealer-agency system, they seek nevertheless to control and supervise the business operations of the 15,000 independent dealer-purchasers" (p. 400).

In addition, the indictments charged that the factory-affiliated or factory-favored finance companies were afforded certain privileges that were denied to independent finance companies, such as space in the plants, factories, and offices of the respective manufacturers; information relating to the purchase, sale, transportation, and delivery of cars to dealers; instruments relating to security in connection with the financing, purchase, and sale of cars; the direct transfer of title of cars to such finance companies before shipment from the factory (R. 140, 147). Availability of such facilities placed the factory-favored finance companies in a preferred position with respect to competition with independent finance companies.

As a result of the coercion imposed upon dealers, as well as the discriminations directed against the independent finance companies, the factory-favored finance companies enjoyed a substantial monopoly of both the wholesale and retail time sales finance business of the several dealer organizations (R. 144). Independent finance companies and banks were deprived of any substantial participation in such business, since Ford, Chrysler, and General Motors manufactured approximately 90 per cent of all cars sold (R. 150).

THE DECREES ENTERED ON NOVEMBER 15, 1938

On November 15, 1938, the indictments in the Ford and Chrysler cases were dismissed, civil suits were ~~submitted~~ therefor (R. 1-13), and consent

*substituted*



judgments entered (R. 18-41).<sup>2</sup> The decrees had a dual purpose. They were designed to afford the dealers a free choice in the selection of financing mediums for both wholesale and retail financing. In addition, they sought to create an opportunity for competition among finance companies. To achieve such ends the decrees enjoined all forms of pressure and coercion formerly imposed upon the dealers (R. 20-32); terminated the affiliation theretofore existing between the factories and the factory-affiliated or factory-favored finance companies (R. 34), and enjoined discriminations formerly imposed against independent finance companies (R. 21-23). Further, a so-called "code of fair competition" was set up under which any finance company registering under the plan was to agree to eliminate harsh collection methods formerly employed against purchasers of low-priced cars (R. 23-29).<sup>4</sup>

The General Motors Group<sup>5</sup> proposed no acceptable plan for settlement and stood trial. In

<sup>2</sup> The civil suits contained allegations identical with the allegations in the indictments (Compare the General Motors indictment (R. 135-151) with the Ford complaint (R. 1-13)). The decrees in both the Ford and Chrysler suits were substantially identical.

<sup>4</sup> No finance company has ever registered under either the Ford or Chrysler decree.

<sup>5</sup> This Group consisted of the manufacturer, General Motors Corporation; the selling organization, General Motors Sales Corporation; and a finance company, General Motors Acceptance Corporation. The latter two concerns are wholly-owned subsidiaries of General Motors Corporation (R. 137-138).

order that Ford and Chrysler be not placed in a position of competitive disadvantage with the General Motors Group, the decrees in the *Ford* and *Chrysler* cases contained two provisions in the form of conditions subsequent under which certain clauses were to be suspended or were to become inoperative unless and until substantially identical relief was obtained against the General Motors Group. The decrees provided that the Government's litigation against the General Motors Group was to be substituted for the test of the issues in the *Ford* and *Chrysler* cases, and that the prohibitions in those decrees should be adjusted, from time to time, to conform with the adjudications made and the results achieved in the proceedings against the General Motors Group (R. 34-38).

Paragraph 12a (1) of the Ford decree provided that unless the Government secured a judgment of conviction against General Motors Corporation and General Motors Acceptance Corporation in the then pending criminal case, or in any further proceeding initiated by reindictment of General Motors Corporation for the same alleged acts, every provision of the decree would be suspended until such time as the restraints and requirements in terms substantially identical with those imposed by the Ford decree were imposed upon General Motors Corporation and General Motors Acceptance Corporation either by consent decree, or by final decree not subject to further review, or

by a decree of such court which, although subject to further review, continues effective (R. 35).

Paragraph 12a (2) of the Ford decree provided that a general verdict of guilty returned against the General Motors Group in the then pending criminal action, followed by entry of judgment thereon, shall be a determination of the illegality of any agreement, act, or practice of the General Motors Group which is held by the trial court, in its instructions to the jury, to constitute a proper basis for the return of a general verdict of guilty (R. 35). Paragraph 12a (2) provided further that the determination in such manner of the illegality of any agreement, act, or practice of the General Motors Group shall (for the purpose of clause 12a (3) of the decree) be considered as the equivalent of a decree restraining the performance by the General Motors Group of such agreement, act, or practice (R. 36).

Paragraph 12a (3) of the Ford decree provided that after entry of a judgment of conviction against the General Motors Group in the then pending criminal action, the Court, upon application of the parties, will suspend the injunctions contained in sub-paragraphs (d) to (f) and (h) to (l) of Paragraph 6 and sub-paragraphs (a), (e), and (d) of Paragraph 7, to the extent that they have not been imposed and until they shall be imposed, either by consent, or by final decree not subject to further review, or by a decree which, although subject to further review, continues

effective, or by the equivalent of such a decree as defined in Paragraph 12a (2) (R. 36-37).<sup>6</sup>

On November 16, 1939, a general verdict of guilty was returned against the General Motors Group in the criminal case, followed by entry of judgment thereon on November 17, 1939. The judgement of conviction was sustained on appeal.<sup>7</sup>

The second condition subsequent related to the bar against affiliation. Paragraph 12 of the Ford decree enjoined Ford from purchasing the securities of any finance company (R. 34). It provided further that the bar against affiliation would be lifted unless the Government succeeded in divesting General Motors Corporation of its ownership and control of its own finance company, General Motors Acceptance Corporation, by January 1, 1941. The Government filed a civil suit against these two concerns, seeking divestiture, on October 4, 1940. The time limit provided for in Paragraph 12 was not met. Annual extensions

<sup>6</sup> Such, *equivalent* was defined in paragraph 12a (2) as the trial court's instructions to the jury in the then pending criminal case against the General Motors Group that the acts or practices enjoined by sub-paragraphs (d) to (f) and (h) to (l) of Paragraph 6 and sub-paragraphs (a), (c), and (d) of Paragraph 7, constituted a proper basis for the return of a general verdict of guilty against the General Motors Group (R. 35-36).

<sup>7</sup> *United States v. General Motors Corporation, et al.*, Cr. No. 1039, N. D. Ind.

<sup>8</sup> *United States v. General Motors Corporation, et al.*, 121 F. (2d) 376, certiorari denied, 314 U. S. 618; rehearing denied, 314 U. S. 710.



were secured by consent of the parties until January 1, 1946 (R. 42-65), at which time Ford refused to extend for another year.

#### THE MOTIONS FOR MODIFICATION

On December 31, 1945, the Government filed a motion seeking an extension of the bar against affiliation until January 1, 1947 (R. 66-72.)<sup>8a</sup>

On May 4, 1946, appellant Ford Motor Company filed a motion (R. 76-91), seeking modification of the Final Decree in two particulars. It sought an order permitting Ford to acquire ownership, control, or an interest in an automobile finance company. In addition, it sought a suspension of sub-paragraphs (i) and (k) of Paragraph 6 of the decree until such time as such provisions are imposed in substantially identical terms upon General Motors Corporation, and a suspension of sub-paragraph (d) of Paragraph 7

<sup>8a</sup> Although the motion sought extension of the bar against affiliation only for the period from January 1, 1946, to January 1, 1947, we think it clear that the case is not moot. On December 27, 1946, the Government filed a motion in the District Court to extend the bar against affiliation from January 1, 1947, to January 1, 1948. (*United States v. Ford Motor Company*, Civil No. 8, N. D. Ind.). At the request of the parties, hearing on this motion has been postponed pending the outcome of the appeal in the case at bar. Obviously this is a situation which arises annually. The mere fact that the period for which the particular extension is sought has passed does not render the case moot under the doctrine announced by this Court in *Southern Pacific Terminal Co. v. Interstate Commerce Commission*, 219 U. S. 498, 514-516.

until such time as such provisions are imposed upon General Motors Acceptance Corporation. It also sought such modification of sub-paragraph (e) of Paragraph 6 as would be necessary to permit conduct now enjoined by sub-paragraphs (i) and (k) of Paragraph 6.

Appellant finance companies also filed a motion (R. 187-199) on May 4, 1946, seeking the identical relief under Paragraphs 6 and 7 of the decree. They did not join in Ford's motion to lift the bar against affiliation.

Paragraph 6 (i) of the decree enjoins Ford from arranging with any finance company that an agent of each of them shall together be present with any dealer or prospective dealer for the purpose of influencing such dealer to patronize that finance company (R. 23).<sup>9</sup> Paragraph 6 (k) of the decree prevents Ford from recommending, endorsing, or advertising any particular finance company to a dealer or to the public (R. 30). Paragraph 7 (d) is the counterpart of Paragraph 6 (i), in that it enjoins appellant finance companies from arranging or agreeing with Ford that an agent of Ford and an agent of appellant finance companies will jointly solicit a dealer for the purpose of influencing such dealer to patron-

<sup>9</sup> A proviso clause in Paragraph 6 (i) does permit such joint visits for the purpose of affording special financing facilities or services to a dealer, and permits such finance company exclusive privileges for a reasonable period of time (R. 23).

ize appellant finance companies (R. 32). Paragraph 6 (e) enjoins Ford from adopting any plan or procedure for the wholesale or retail financing of cars which will afford any particular finance company a competitive advantage in securing dealer patronage (R. 21-22).

ACTION TAKEN BY THE COURT BELOW

The District Court denied appellants' motions to suspend Paragraphs 6(i), 6(k), and 7(d) of the decree; denied appellant Ford's motion to modify Paragraph 12 in such way as to permit Ford to purchase an interest in a finance company; and granted the Government's motion under Paragraph 12 which sought extension of the bar against affiliation to January 1, 1947 (R. 161-162).

As to appellants' motions to suspend Paragraphs 6(i), 6(k), and 7(d), the District Court found:

(1) That under the decree, Paragraphs 6(i), 6(k), and 7(d) were to be suspended in the event of failure of the Government to secure general verdicts of guilty against General Motors Corporation, General Motors Acceptance Corporation, and others, in a then pending criminal anti-trust proceeding by January 1, 1940 (Finding No. 5) (R. 158);

(2) That general verdicts of guilty were obtained against General Motors Corporation, General Motors Acceptance Corpora-

tion, and others, on November 17, 1939, and that such general verdicts were sustained on appeal (Finding No. 6) (R. 159);

(3) That the trial court in its instructions to the jury in the criminal proceedings against General Motors Corporation and others, held that the agreements, acts, and practices enjoined in Paragraphs 6 (i), 6 (k), and 7 (d) of the Ford decree herein, among others, constituted a proper basis for the return of a general verdict of guilty (Finding No. 7) (R. 159);

(4) That under Paragraph 12a (2) of the Ford decree herein, the general verdict of guilty in the *General Motors* case, under the instructions to the jury by the trial court, is equivalent to a decree restraining the performance by General Motors Corporation of such agreement, acts, or practices as are enjoined by Paragraphs 6 (i), 6 (k), and 7 (d) and other paragraphs of the decree (Finding No. 8) (R. 159);

(5) That the prohibitions contained in Paragraphs 6 (i), 6 (k), and 7 (d) of the Ford decree have been imposed in substantially identical terms upon General Motors Corporation and General Motors Acceptance Corporation as a result of the general verdict of guilty against them under proper instructions from the trial court in accordance with the provisions of Paragraph 12a (2) of the decree (Finding No. 9) (R. 159);



(6) That respondents are not laboring under any competitive disadvantage with General Motors Corporation and General Motors Acceptance Corporation in the manufacture, sale, and financing of Ford cars by virtue of the prohibitions contained in Paragraphs 6 (i), 6 (k), and 7 (d) of the Ford decree, and offered no evidence showing competitive disadvantage (Finding No. 10) (R. 159).

The District Court concluded as a matter of law:

(1) That under Paragraph 12a (2) of the decree, general verdicts of guilty against General Motors Corporation and others in the criminal antitrust case, under proper instructions from the trial court, must be considered the equivalent of a decree against General Motors Corporation enjoining the performance by General Motors Corporation of any agreements, acts, or practices which the trial court, in its instructions to the jury, held to be a violation of the Sherman Act (Conclusion of Law No. 2) (R. 160);

(2) That under Paragraph 12a (3) of the Ford decree, the injunctions imposed by Paragraphs 6 (i), 6 (k), and 7 (d), among others, are not to be suspended if the equivalent of a decree, as set out in Paragraph 12a (2), is secured against General Motors Corporation (Conclusion of Law No. 3) (R. 160).

As to the motion of the Government to extend the bar against affiliation for another year, or

until January 1, 1947, as well as to appellant Ford's motion to be relieved permanently of such bar, the District Court found:

(1) That the purpose of the second unnumbered paragraph of paragraph 12 of the Ford decree was not only to protect Ford from the competitive disadvantage that might result from continued ownership of General Motors Acceptance Corporation by General Motors Corporation in the event the Government's civil suit for divestiture against General Motors Corporation and General Motors Acceptance Corporation was delayed, but also to give Ford an opportunity to defend itself on the question of affiliation, after the time limit set forth in such paragraph had expired (Finding No. 1) (R. 158);

(2) That the Government's suit to divest General Motors Acceptance Corporation from General Motors Corporation is still pending in the District Court, and has not been reached for trial, but the Government has proceeded diligently and expeditiously in such suit (Finding No. 2) (R. 158);

(3) That the decree provided for a termination of the bar against affiliation, if the civil suit for divestiture against General Motors Corporation and General Motors Acceptance Corporation was not concluded successfully by a court of last resort by January 1, 1941 (Finding No. 11) (R. 159);

(4) That the provisions of Paragraph 12 of the decree relating to the bar against affiliation were framed upon the basis that the ultimate rights of the parties thereunder would be determined by the Government's civil suit to divest General Motors Acceptance Corporation from General Motors Corporation (Finding No. 13) (R. 160);

(5) That time was not of the essence with respect to the lapse of the bar against affiliation (Finding No. 14) (R. 160);

(6) That Ford has offered no proof that further extension of the bar against affiliation will place it at a competitive disadvantage with General Motors Corporation (Finding No. 15) (R. 160);

(7) That further extension of the bar against affiliation until January 1, 1947, will not impose a serious burden upon Ford, and will not place Ford at a competitive disadvantage as regards General Motors Corporation (Finding No. 16) (R. 160).

On the bar against affiliation the District Court concluded as a matter of law:

(1) That the purpose and intent of Paragraph 12 was to provide that the test of the permanency of the bar against affiliation was to abide the outcome of the civil anti-trust suit against General Motors Corporation, and that the time clause was subsidiary to such main purpose (Conclusion of Law No. 4) (R. 161);

(2) That the purpose and intent of the decree will be achieved if Ford is given the opportunity at any future time to propose a plan for the acquisition of a finance company, and to make a showing that such plan is necessary to prevent Ford from being placed at a competitive disadvantage during the pendency of the Government's civil litigation against General Motors Corporation, et al. (Conclusion of Law No. 5) (R. 161).

#### SUMMARY OF ARGUMENT

##### I

In the criminal proceedings against the General Motors Group the trial court correctly instructed the jury that if, upon a consideration of the entire charge in the indictment and of all of the evidence, it thought that the dealers had been coerced to use the financing facilities of the factory-owned finance company, the jury could properly return a general verdict of guilty. The trial court's charge to the jury was sufficiently broad to include, as a means of coercion, recommendation and endorsement by the factory of the financing services of its affiliated finance company as well as joint visits to the dealers by agents of both companies.

The trial court's charge to the jury must be construed in its entirety and not in isolation. Certain portions of the charge cannot be isolated



and construed separately and apart from their context. The trial court did not instruct the jury that any particular agreement, act, or practice constituted merely exposition, persuasion, or argument and hence was lawful. The court did instruct that if, upon a consideration of the entire charge in the indictment and the evidence, the jury decided that the agreements, acts, and practices constituted merely exposition, persuasion, or argument, they should acquit, but that if the jury found that such conduct constituted coercion, they should convict. Such was an issue of fact which the trial court properly left for determination by the jury.

In an attempt to clarify the meaning of the word "coercion," the court did compare the meaning of that term with the meaning of the terms "exposition," "persuasion," and "argument." That is all that the court did. Under such instructions the jury's general verdict of guilty was a determination that a sufficient number of the allegations in the indictment had been established by the evidence to constitute coercion, and not merely exposition, persuasion, or argument. Since a substantial part of the evidence introduced at the trial related to joint solicitation of the dealers by representatives of the factory and the affiliated finance company who recommended and urged that the dealers use the services of the

factory-affiliated finance company, it is reasonable to assume that such evidence played an important part in the return by the jury of a general verdict of guilty. The instructions given were adequate to include recommendation and endorsement as well as joint solicitations.

The precarious contractual position occupied by the dealers in relation to the manufacturer, as well as their notoriously weak economic condition, make them peculiarly susceptible to the slightest pressure from the factory. Under such circumstances the practice of the factory in recommending a particular finance company, as well as the practice of joint solicitation by agents of the factory and a favored finance company, violate the Sherman Act whether they be considered standing alone or as means to further an illegal purpose.

Where provisions of a decree are to be suspended in the event those enjoined by it are placed in a position of competitive disadvantage, it is incumbent upon those desiring to be freed from the injunction to produce convincing proof of the asserted competitive disadvantage. No such proof was offered here.

## II

The court below, in refusing to grant appellant Ford's motion to lift permanently the bar against

affiliation with a finance company and in granting the Government's motion for extension of the bar, properly exercised the discretion vested in it as a court of equity. In *Chrysler Corporation v. United States*, 316 U. S. 556, this Court affirmed a similar ruling by the district court in a companion suit involving identical decree provisions.

Ford made no showing in the court below that it had any present or future intention of acquiring an interest in a finance company. Likewise, no proof was made that the inability of Ford to affiliate with a finance company places it in a competitively disadvantageous position. Since appellant did not attempt to show the facts held by the *Chrysler* case, *supra*, to be essential to the establishment of a claim for relief from the bar against affiliation, it should not be heard to complain that the district court refused to grant such relief.

The Government has proceeded with reasonable diligence in its suit to divorce General Motors from its affiliated finance company. Thus far the Government has been unsuccessful in its efforts to limit the use by defendants of discovery proceedings and force the case to trial. In the circumstances, it should require a showing of extreme hardship, which appellant has not made, to justify holding that the Government has forfeited its right to protect the public interest through lack of diligence.

## ARGUMENT

## I

THE INJUNCTIONS IMPOSED AGAINST APPELLANTS BY PARAGRAPHS 6 (i), 6 (k), AND 7 (d) OF THE DECREE BECAME FINAL UPON RETURN OF A GENERAL VERDICT OF GUILTY AGAINST THE GENERAL MOTORS GROUP UNDER PROPER INSTRUCTIONS TO THE JURY

In support of their contention that Paragraphs 6 (i), 6 (k), and 7 (d) of the decree should be suspended, appellants urge (1) that under Paragraph 12a of the decree Paragraphs 6 (i), 6 (k), and 7 (d) were to be suspended until such time as substantially identical injunctions were imposed against the General Motors Group, either by a decree or its "equivalent"; (2) that the "equivalent" of such a decree was defined as any agreement, act, or practice of the General Motor Group which the trial court, in its instructions to the jury in the then pending criminal antitrust suit held to constitute a proper basis for the return of a general verdict of guilty; (3) that the trial court in the *General Motors* case did not instruct the jury that the type of agreements, acts, and practices enjoined by Paragraphs 6 (i), 6 (k), and 7 (d) of the decree constituted, among others, a proper basis for the return of a general verdict of guilty, but on the contrary instructed that some of them were legal and proper; (4) that since the agreements, acts, and practices enjoined by Paragraphs 6 (i), 6 (k), and 7 (d) can be indulged by the General Motors Group, appellants are placed



in a position of competitive disadvantage with the General Motors Group; and (5) that in any event the agreements, acts, and practices enjoined by Paragraphs 6 (i), 6 (k), and 7 (d) of the decree do not constitute unreasonable restraints of trade.<sup>10</sup>

A. IN THE CRIMINAL PROCEEDINGS AGAINST THE GENERAL MOTORS GROUP, THE TRIAL COURT INSTRUCTED THE JURY THAT THE PRACTICE BY GENERAL MOTORS CORPORATION OF RECOMMENDING, ENDORSING, AND ADVERTISING GENERAL MOTORS ACCEPTANCE CORPORATION, ITS AFFILIATED FINANCE COMPANY, AS WELL AS THE PRACTICE OF JOINT SOLICITATION OF THE DEALERS BY AGENTS OF GENERAL MOTORS CORPORATION AND GENERAL MOTORS ACCEPTANCE CORPORATION, CONSTITUTED, ALONG WITH OTHER PRACTICES, A PROPER BASIS FOR THE RETURN OF A GENERAL VERDICT OF GUILTY

Appellants argue that the types of conduct enjoined by Paragraphs 6 (i), 6 (k), and 7 (d) of the decree, constitute nothing more than recommendation, persuasion, or endorsement, which are perfectly lawful, and that the trial court so held in its instructions to the jury in the criminal anti-trust suit against the General Motors Group.<sup>11</sup>

The error in this reasoning lies in the fact that it ignores the impact of the trial court's charge to the jury when considered in its entirety. Appellants have isolated certain portions of the charge and have attempted to construe them separately and apart from their context. In failing to consider the instructions as a whole, they violate fundamental principles of construction. In *Mag-*

<sup>10</sup> Ford Brief 21-50; CIT Brief 25-50.

<sup>11</sup> Ford Brief 25-38; CIT Brief 25-40.

*niac v. Thomson*, 7 Pet. 348, 390, this Court, speaking through Mr. Justice Story, said:

\* \* \* In examining the charge for the purpose of ascertaining its correctness in point of law, the whole scope and bearing of it must be taken together. It is wholly inadmissible to take up single and detached passages, and to decide upon them without attending to the context, or without incorporating such qualifications and explanations as naturally flow from the language of other parts of the charge. In short, we are to construe the whole as it must have been understood, both by the Court and the jury, at the time when it was delivered.<sup>12</sup>

We submit that the trial court's instructions, when considered as a whole, rather than piecemeal, do not lead themselves to the interpretation advanced by appellants. The Indictment charged that the General Motors Group had coerced or forced dealers selling General Motors cars to use the financing facilities of General Motors Acceptance Corporation; that this coercion had taken many and varied forms; that the dealers were peculiarly susceptible to the

<sup>12</sup> This rule has been followed consistently. See *Rhett v. Poe*, 2 How. 456, 481; *Insurance Company v. Transportation Company*, 12 Wall. 194, 203; *Spring Company v. Edgar*, 99 U. S. 645, 659; *New York, Lake Erie and Western Railroad Company v. Estill*, 147 U. S. 591, 614; *Seaboard Air Line Railway v. Padgett*, 236 U. S. 668, 672; *Schaefer v. United States*, 251 U. S. 466, 471; *Boyd v. United States*, 271 U. S. 104, 107.

slightest pressures due to the weakness of their financial position as compared to that of the manufacturer and to their precarious contractual position with the manufacturer (R. 144-149).

The trial court did not discuss separately each and every means alleged in the indictment to force dealers to use the financing facilities of General Motors Acceptance Corporation; nor did he discuss specifically the evidence introduced in support of such allegations. He attempted to simplify the issues<sup>13</sup> by explaining the purpose of the antitrust laws (R. 92); by summarizing briefly the contents of the indictment without detailing all of the acts which it alleged (R. 93-96); and illustrated by a single example the type of conduct which would constitute an unreasonable restraint of trade (R. 98). The court explained that under the charge in the indictment, the evidence and the law, there were two primary issues of fact which the jury must decide; namely, whether the dealers were coerced, and

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<sup>13</sup> The trial court's concept of his duty to the jury was stated clearly in his refusal to give instructions in the technical language proposed by counsel. He said (R. 115):

"My feeling about the duty of a Trial Judge in the decision of a jury question, my conception of the Judge's aid to the jury, is that it can be done and such aid can be rendered more efficiently by an oral charge which describes, in as simple terms as possible, the legal questions involved, and that I refrain, except as a last resort always, from giving to the Jury formal charges which become so involved in legal language and legal terms as to be of little aid to the Jury."

whether such coercion, if it did exist, constituted an unreasonable restraint of trade (R. 99, 101). The court said that the Government had a right to complain only if the defendants engaged in a sufficient number of the acts charged to constitute duress upon the dealers to achieve a result that otherwise would not have been accomplished, and to make the dealer do something that he would not have done of his own free will (R. 99). The court charged that the ultimate question in the case was whether the dealer could act as a free man (R. 99).

In an attempt to clarify the meaning of the word "coercion," the court compared the meaning of that word with the meaning of the words "exposition," "persuasion," and "argument." The court instructed that conduct which went no further than "exposition," "persuasion," or "argument" was proper and lawful, but that coercive conduct was unlawful (R. 100). The trial court did not, as claimed by the appellants, instruct the jury that any particular agreement, act, or practice constituted merely "exposition," "persuasion," and "argument," and hence did not constitute a violation of law. Such were issues of fact which the trial court properly left for determination by the jury. The jury's general verdict of guilty was a determination, under the trial court's instructions, that a sufficient number of the allegations in the indictment had been established by the evidence to constitute "coercion" and not



merely "exposition," "persuasion," or "argument." The jury was instructed that in arriving at a verdict it must consider all of the evidence (R. 97).

In a further attempt to illustrate and explain the meaning of the term "coercion," the trial court pointed out certain types of conduct which, standing alone, were not coercive and were not charged as such. In this connection the court said that it was not charged that in and of itself the mere recommendation to use General Motors Acceptance Corporation or the cancellation of a dealer's contract for just cause, or the mere ownership by the factory of a finance company was unlawful (R. 98-99).

If, under all of the instructions given, the jury had found that the acts charged and proved constituted nothing more than "recommendations," or "persuasion," or "exposition," or "argument," the only alternative would have been to return a verdict of acquittal. But, under the instructions given, the jury returned a general verdict of guilty. Hence, it must have found that the conduct charged and proved went beyond mere "recommendation," "persuasion," "exposition," and "argument" and constituted "coercion." Appellants admit that coercion is unlawful. Since a substantial part of the evidence introduced at the trial related to the coercion inherent in joint solicitation of the dealers by representatives of the factory and the affiliated finance company, who

"recommended" and "urged" that the dealers use the services of General Motors Acceptance Corporation, it is reasonable to assume that such evidence played an important part in the jury's return of a general verdict of guilty."

We submit that the trial court in instructing the jury in the criminal case against the General

<sup>14</sup> The Circuit Court of Appeals discussed the coercive effect of joint solicitation in the *General Motors* case, saying (121 F. 2d at 394):

"At periodical meetings zone managers (GMSC) are instructed to secure dealers' use of GMAC finance and branch managers (GMAC) are told to enlist the aid of GMSC representatives in procuring dealers' use of GMAC credit. Manuals are distributed to GMAC and GMSC personnel directing full cooperation in order to obtain dealers' patronage for GMAC, and the two sets of reports (the 10-day and 30-day reports made to GMSC, and the 5154 and 5171 reports made by GMAC) are inter-changed between the parallel organizations.

"If GMAC records indicate that a particular dealer is not financing a sufficient percentage of his time sales with GMAC, the aid of the zone manager of the proper sales unit is requested. The zone manager has authority to cancel a franchise contract, subject to confirmation by the regional manager, and controls the distribution of cars in times of car shortage and in periods of overproduction. Thereafter, a representative of GMAC and the zone manager make a joint call on the dealer for the purpose of securing the additional patronage for GMAC.

"Every year dealers attend contract renewal meetings where they are interviewed by GMAC representatives in connection with the manner of financing cars. Unless the dealers' use of GMAC has been satisfactory during the preceding year, he is unable to secure the approval of the GMAC representative. In such cases the signing of his contract is postponed indefinitely by the zone manager until such time as the dealer makes satisfactory commit-

Motors Group as to what agreements, acts, or practices would constitute a proper basis for the return of a general verdict of guilty, included, as a part of such instructions, and in their proper relation to all of the evidence and the charges in the Indictment, the type of conduct enjoined by Paragraph 6 (i), 6 (k), and 7 (d) of the decree herein.<sup>15</sup> Since, under the Ford decree, such in-  
 ments for the coming year with respect to financing with GMAC. \* \* \*

"Obviously, such evidence as related above tends to disclose the tremendous influence exerted by appellants over dealers with respect to their use of GMAC."

After discussing several other types of evidence, the court concluded with the statement (p. 397) that:

"It is clear that the evidence in this case tends to show a conspiracy having as its purpose the control by appellants of the dealers' financing. \* \* \* The jury could have interpreted the testimony in the light of all the circumstances, and it was proper for the jury to rely on inferences naturally flowing from the whole evidence \* \* \*"

"It is even plainer that the jury finding of coercion is supported by the evidence. The coercive practices were many and varied (not all detailed in this opinion), and directly aimed to compel dealer-purchasers to use GMAC in financing the wholesale purchase and retail sale of General Motors cars. These practices occurred often and with sufficient continuity to constitute a definite course of business conduct. Undoubtedly the jury was warranted in attaching the coercion label to the action thus adopted by the appellants."

<sup>15</sup> Paragraph 58 of the Indictment (R. 148) alleged that one of the means employed by the defendants to force dealers to use the services of the factory-affiliated finance company, was to endorse and recommend such finance company. It reads: "To advertise, endorse, recommend and

structions were to be considered as the equivalent of a decree enjoining the General Motors Group from engaging in such practices, and since appellants were to be bound only to the extent that the General Motors Group was bound (R. 35-37), the injunctions imposed against appellants by Paragraphs 6 (i), 6 (k), and 7 (d) became final when the general verdict of guilty was returned against the General Motors Group on November 17, 1939, under the instructions given.

**B. IN VIEW OF THE DEALERS' READY SUSCEPTIBILITY TO FACTORY INFLUENCE, THE PRACTICE OF RECOMMENDING A FACTORY-FAVORED OR FACTORY-AFFILIATED FINANCE COMPANY, AS WELL AS THE PRACTICE OF JOINT SOLICITATION OF DEALERS BY AGENTS OF THE FACTORY AND OF THE FAVORED FINANCE COMPANY, CONSTITUTE COERCION AND HENCE VIOLATE THE SHERMAN ACT**

Appellants insist that, regardless of the legality of such conduct, they by bargain won the right to engage in joint solicitation and have the manufacturer's stamp of approval placed on its favored finance company. It seems to us anomalous that appellants should expect a court of equity to free them of any part of the hazards attendant upon the commission of illegal acts. We believe it to be plainly demonstrable that the practices in which appellants seek to engage, when viewed against the factual background of the industry, are clearly illegal.

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promote, and to coerce and require dealers to advertise, recommend and promote, the use of the automobile financing services, plans and facilities of General Motors Acceptance Corporation."



Although the formal contractual relationship between the dealer and the factory is not one of agency, but rather one in which the dealer is an independent contractor, nevertheless the factory insists upon controlling and supervising virtually all of the business operations of the dealer without assuming any of the liabilities normally incident to an agency relationship.<sup>16</sup>

The precarious contractual position occupied by the dealers in relation to the manufacturer, as well as their notoriously weak economic condition, makes the dealers peculiarly susceptible to the slightest pressure from the factory. Each dealer is required to make a substantial investment as a condition precedent to securing a franchise authorizing such dealer to purchase and sell cars. The factory requires that all cars purchased by the dealer must be paid for in cash before shipment from the factory. The dealer's contract runs for one year only and is subject to cancellation on short notice and without cause. The dealer's substantial investment will be lost unless he can continue to buy and sell cars. In addition, the manufacturer has a monopoly on the supply of cars.<sup>17</sup> Since the dealer's business existence is based upon a one-year contract which

<sup>16</sup> See footnote 2, p. 7, *infra*. The same relationship exists between Ford and its dealers and between Chrysler and its dealers.

<sup>17</sup> The court in the *General Motors* case discussed the manner in which the manufacturer uses its car monopoly to

places no substantial contractual obligation on the manufacturer, and since such contract is cancellable on short notice and without cause, it is indeed a hardy dealer who would risk commercial suicide by choosing freely a financing medium in the face of an *endorsement* and *recommendation* by the factory of a particular finance company, and in the face of *joint solicitation* by agents of the factory and such finance company.

The success of such endorsement and recommendation through joint solicitation in securing the dealer's use of the financing facilities of the factory-favored finance company was discussed fully and illustrated clearly in the decision of the Seventh Circuit Court of Appeals in the *General Motors* case.<sup>18</sup> In summarizing the position of the dealer in reference to his lack of free choice in selecting a finance medium, that court said (p. 401):

As matters now stand, some 15,000 dealers are graciously allowed to continue force dealers to use the finance services of its affiliate. It said (p. 402):

"In the instant case General Motors Corporation and the other conspirators made use of their monopoly over the supply of General Motors cars and their power over the economic fate of General Motors dealers, to force GMAC on dealer-purchasers and retail purchasers of General Motors cars, in effect tying the GMAC finance conditions and restrictions to the wholesale purchase and retail sale of General Motors cars. \* \* \* See also the Ford complaint (R. 1-13).

<sup>18</sup> See footnote 14, pp. 30-31, *infra*.

their business of purchasing and selling General Motors cars in return for their slavish obedience to the command of the appellants to use the GMAC finance service. We should not tolerate a control mechanism definitely calculated to make General Motors dealers independent in name only. The best security to the public lies in the immediate removal of the finance restrictions. Then the dealer-purchasers and retail purchasers of General Motors cars may choose the finance service they desire, and the discrimination against would-be purchasers of General Motors cars (those who are now ineligible under GMAC terms, dissatisfied with GMAC service, or desirous of using an independent finance service) would disappear.

Appellant Ford argues (Br. 30-35) that it will not coerce its dealers to use the financing facilities of respondent finance company; that it merely wishes to "persuade" them to use such facilities; that other injunctive provisions of the decree, against which they seek no relief, prevent coercive conduct; that Paragraph 6 (h) enjoins Ford from cancelling or threatening to cancel a franchise for failure to patronize a preferred finance company; that Paragraph 6 (f) enjoins Ford from discriminating among its dealers for the purpose of influencing a dealer to patronize a preferred finance company.

It is pertinent to inquire as to what appellant Ford means by the term "persuade." Certainly Ford expects its dealers "to be persuaded," else it would not seek modification of the decree. If any particular method of "persuasion" fails, other methods of "persuasion" presumably would be employed. If Ford is permitted to "persuade" its dealers to use a preferred finance company, it will find a way to make "persuasion" effective. The difference between a threat and "persuasion" may involve such finely-drawn subtleties of language and conduct as to make the two indistinguishable. This is particularly true in a situation such as is involved here, where the dealer is peculiarly subject to the slightest hint from the factory.

We submit that under the peculiar relationship existing between the factory and the dealer, recommendation and endorsement by the factory of a particular finance company and joint solicitation of a dealer by agents of the factory and such finance company, constitute in and of themselves coercive conduct condemned by the Sherman Act, since such practices operate to force unreasonable terms on independent traders and unduly limit their liberty to do business. See *I. A. of M. v. Labor Board*, 311 U. S. 72, 78; *Labor Board v. Link-Belt Co.*, 311 U. S. 584, 598; *Binderup v. Pathé Exchange*, 263 U. S. 291, 312; *Loewe v. Lawlor*, 208 U. S. 274, 293-294; *United*



*States v. Patten*, 226 U. S. 525, 541. The Seventh Circuit Court of Appeals in the *General Motors* case so indicated (121 F. 2d at 394-397, 402-403). However, we need not stand on such a position. Even if we were to concede, for the sake of argument, that such conduct, standing alone, is lawful, it becomes unlawful when directed toward achieving an unlawful purpose and when pursued along with other means which are clearly unlawful. The entire plan may make the parts unlawful. *Aikens v. Wisconsin*, 195 U. S. 194, 195; *Swift and Company v. United States*, 196 U. S. 375, 396; *United States v. Reading Co.*, 226 U. S. 324, 358; *United States v. Patten*, 226 U. S. 525, 543; *Duplex Co. v. Deering*, 254 U. S. 443, 465. In framing a decree under the antitrust laws a court of equity may use its power "to eradicate the evils of a condemned scheme by prohibition of the use of admittedly valid parts of an invalid whole." *United States v. Bausch & Lomb Optical Co.*, 321 U. S. 707, 724. But whether the conduct enjoined by Paragraph 6 (i), 6 (k), or 7 (d) of the decree be considered lawful or unlawful when viewed in isolation, or whether it be considered as unlawful because used to further an illegal purpose, the issue of legality was foreclosed when the conditional decree became absolute by the return of a general verdict of guilty against the General Motors Group under appropriate instructions to the jury, and the court below so found (R. 158-160).

C. THE DISTRICT COURT WAS CORRECT IN FINDING THAT APPELLANTS ARE NOT LABORING UNDER ANY COMPETITIVE DISADVANTAGE WITH THE GENERAL MOTORS GROUP IN THE MANUFACTURE, SALE, AND FINANCING OF FORD CARS, AS A RESULT OF THE INJUNCTIONS CONTAINED IN PARAGRAPHS 6 (i), (6) (k), AND 7 (d) OF THE DECREE, AND IN FINDING THAT APPELLANTS OFFERED NO EVIDENCE SHOWING COMPETITIVE DISADVANTAGE

Appellants contend that the finding by the district court that they are laboring under no competitive disadvantage as against General Motors in the manufacture, sale, and financing of Ford cars by virtue of the injunctions contained in Paragraphs 6 (i), 6 (k) and 7 (d) of the decree, as well as the finding that appellants offered no evidence showing competitive disadvantage, are immaterial, since the conditions governing the finality of such injunctions have not been met. They contend further that such findings are erroneous since appellants are in fact laboring under a competitive disadvantage.<sup>19</sup>

Under the decree appellants are entitled to a suspension of Paragraphs 6 (i), 6 (k) and 7 (d) *only* if the trial court in instructing the jury in the *General Motors* case failed to instruct that the practices therein described, among others, constituted a proper basis for the return of a general verdict of guilty in that case. If our argument in the preceding sections of this brief is correct, the trial court did not fail so to instruct and the General Motors group can not legally engage in such practices. The Chrysler Group is expressly

<sup>19</sup> Ford Brief 42-46; CIT Brief 43-46.

enjoined from engaging in such practices by an identical decree entered on the same day as the Ford decree.<sup>20</sup> These two groups together with Ford manufacture and sell approximately 90 per cent of all cars manufactured and sold in the United States (R. 124A). Consequently, continuation of the injunctive provisions against Ford can result in no competitive disadvantage.

In support of their contention that they are in fact laboring under a competitive disadvantage with the General Motors Group, appellants assert (1) that Ford's percentage of the total number of cars sold in the United States declined during the period 1936-1940; (2) that CIT has lost Ford finance business to banks and other lending agencies since entry of the decree in 1938; and (3) that CIT's Ford dealer market for financing cars has decreased in the same proportion as the decrease in sales of Ford cars.

Although insisting that it is laboring under a competitive disadvantage with General Motors as a result of the prohibitions in Paragraphs 6 (i), 6 (k), and 7 (d) of the decree, Ford admits (Br. 47) that the record does not show the loss by Ford to General Motors of any particular sales as a result of Ford's inability to make joint visits with and recommend a finance company.

The only indication in the record showing Ford's inability to compete with General Motors

<sup>20</sup> See *United States v. Chrysler Corporation*, Civil No. 8, N. D. Ind. (316 U. S. 556).

consists of a chart attached to an affidavit filed in support of the motion to modify (R. 124A). This chart shows the relative percentage of the total car market occupied by Ford during the period 1932-1940, inclusive. It indicates that Ford's percentage participation in the market increased 23.9 percent in 1932 to 30.2 percent in 1935, and that it decreased to 18.9 percent by 1940. It would strain credulity to insist that this loss in total sales resulted from Ford's inability to recommend a finance company, or to make joint visits with such company and recommend it to dealers. The reasons for shifts in market position from year to year in any business are varied and frequently difficult to explain. Vigor of the respective selling organizations, the changing preferences of the buying public with respect to type, design, and performance, and other considerations, combine to cause variances in total industry position. Certainly Ford cannot insist, nor does its chart prove, that its loss of business during the period 1936-1940, inclusive, was due wholly, or even in part, to its inability to control the financing medium of its dealers.

In *Chrysler Corporation v. United States*, 316 U. S. 556, 564, this Court, in construing a decree identical to the one under review here, said that if Chrysler felt that its inability to affiliate with a finance company would place it in a position of competitive disadvantage with its competitors it should have made such a showing to the district



court.<sup>21</sup> Chrysler had made no such showing. Ford made none here. Ford not only failed to prove any actual competitive disadvantage but enjoys equality of competitive opportunity with General Motors under the terms of the decree.

Ford argues (Br. 49-50) that it should be permitted to recommend a finance company to its dealers for the purpose of protecting its good will, since cars are sold at places licensed to display Ford's trademark. It argues that the practices of the finance company to whom the dealer sells his retail time sales paper will determine whether a customer will come back when he wants to buy a new car; that some finance companies make high charges for extensions of maturity and insurance renewals and repossess cars without adequate notice; that dealers do not often select finance companies on the basis of the service such companies offer the customer, but select the company which will offer the dealer the best rebate in return for his patronage.

Admittedly, Ford has a legitimate interest in protecting the good will of its products. We submit, however, that an attempt by Ford to dictate the concern with whom the dealers may finance cars owned and sold by the dealers goes beyond the permissible limits of protecting the manufacturer's good will. Under his contract with Ford,

<sup>21</sup> The specific decree modification sought in the *Chrysler* case was the same as that discussed herein under Point II, *infra*.

the dealer is not an agent but an independent contractor. He owns the car which he sells on time, since Ford requires that he pay cash for the car before it is shipped from the factory to the dealer's place of business. Ford cannot, under the guise of protecting the good will of its trademark, control the whole process of distribution.

The same argument was advanced by General Motors in its appeal from the convictions in the criminal case. In disposing of this defense the Seventh Circuit Court of Appeals said (p. 400):

\* \* \* No doubt it is proper for GMC and GMSC to promote manufacturer's goodwill and to protect the manufacturer against inefficient and unscrupulous dealers. \* \* \* But there is a limit to how far a manufacturer may go to control the whole process of distribution. The jury found that the appellants had gone too far with their control plans, and we are inclined to approve and to indorse the jury finding.

Under the decree, however, Ford is not without ability to protect the good will of its trademark. While Paragraph 6 (k) of the decree prohibits Ford from recommending, endorsing, or advertising appellant finance companies or any particular finance company to its dealers, the proviso clause does permit Ford to adopt a plan or plans of its own for financing retail sales of cars, and permits Ford to recommend the use of such plans to its dealers, as well as to advertise and recom-

mend to the public the use of such plans.<sup>22</sup> We submit that this exception to the prohibitions contained in Paragraph 6 (k) of the decree gives Ford ample opportunity to protect its good will. To permit it to go further and insist that its dealers must use the services of a particular finance company designated by Ford would do violence to the independent legal status of the dealers.

Appellant finance companies also argue (Br. 41-48) that to the extent that Ford is at a competitive disadvantage, they are under the same disadvantage, and that failure of the Government to obtain injunctions against the General Motors Group similar to those in Paragraphs 6 (i), 6 (k), and 7 (d) of the decree has the effect of discriminating against them. As in the case of Ford, appellant finance companies offered no proof in the District Court to show either competitive disadvantages or discrimination.

Appellant finance companies reason (Br. 44-45) that since the volume of sales of General Motors

<sup>22</sup> The proviso clause in Paragraph 6 (k) reads as follows (R. 30):

"provided, however, that nothing in this decree contained shall prevent the Manufacturer in good faith:

"(1) From adopting from time to time a plan or plans of financing retail sales of new automobiles made by the Manufacturer or from time to time withdrawing or modifying the same;

"(2) From recommending to its dealers the use of such plans;

"(3) From advertising to the public and recommending the use of such plans."

cars has increased since entry of the decree, while Ford sales have decreased, the available market of cars which might be financed by them has decreased to their obvious economic disadvantage. They argue further (Br. 45-46) that their Ford financing business has diminished substantially since entry of the decree in 1938; that thousands of commercial banks located throughout the United States, which previously were not engaged in automobile financing, have now entered the field; and that this new competition has diminished their Ford finance market.<sup>23</sup> This assumes that appellant finance companies are entitled to the Ford dealers' finance market regardless of their ability to secure a fair share of such market competitively.

The argument amounts to an admission that the decree has had the effect it was intended to have; namely, the creation of competition in the financing of Ford cars. Appellant finance companies admit that they have lost Ford financing business to banks and other lending agencies since entry of the decree. Having lost business to competitors in a free market, they now seek to recapture it by the substitution of the previously existing protected market. They are asking this Court to protect them from the ravages of competition by restoration of the non-competitive, discriminatory.

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<sup>23</sup> The same reasons were advanced as a part of their motion to modify (R. 195-196).



*status quo ante.* They are asking this Court to approve a combination between them and Ford under which appellant finance companies will be forced on Ford dealers whether or not such dealers desire to employ such financing services. They seek this Court's blessing on a type of combination which the Seventh Circuit Court of Appeals in the *General Motors* case held was clearly illegal, and which holding this Court twice declined to review.

We submit that a suspension of Paragraphs 6 (i), 6 (k), and 7 (d) of the decree will assist materially in recreating those conditions which the suit was designed to eliminate and which the courts have declared to be illegal. We think it is clear that Ford is attempting, through these motions, to regain the privilege of dictating to its dealer organization the finance company with which its dealers must do business. We think it is equally clear that appellant finance companies are seeking, through such motions, to recapture the non-competitive market which they once enjoyed.

## II

IN GRANTING APPELLEE'S MOTION FOR EXTENSION OF THE BAR AGAINST AFFILIATION, THE COURT BELOW APPROPRIATELY EXERCISED ITS EQUITY JURISDICTION

As indicated previously, the Government filed a motion seeking an extension of the bar against affiliation to January 1, 1947 (R. 66-71). Appel-

lant Ford moved that such bar be lifted permanently (R. 76-91).<sup>24</sup>

In support of its contention that the bar against affiliation should be lifted, Ford urges (1) that under the terms of Paragraph 12 of the decree Ford is entitled to an *automatic* termination of such bar unless the Government succeeded in divorcing General Motors Acceptance Corporation from General Motors Corporation by a day certain; (2) that this was an express condition to be effective notwithstanding any other provisions of the decree; (3) that the Government has not yet succeeded in divorcing General Motors Acceptance Corporation from General Motors Corporation; (4) that the Government has not been diligent in disposing of its divestiture suit against the General Motors Group and made no showing of such diligence; and (5) that Ford is under a competitive disadvantage with General Motors as a result of the bar against affiliation and established this fact in the court below (Br. 34-66). /

Paragraph 12 of the decree enjoins Ford from purchasing the securities of a finance company; from making a loan to a finance company; from accepting a commission from a finance company on account of retail time sales paper acquired by that company from Ford dealers; and from paying any money to a finance company for the purpose of inducing such company to lower its finance

<sup>24</sup> Appellants in the CIT Group did not join in this motion.

charges unless similar payments are made available to other finance companies (R. 34). Ford's motion is directed only to the injunction preventing Ford from owning or purchasing an interest in a finance company (R. 76).

While Paragraph 12 of the decree was to become effective immediately upon entry of the decree, its ultimate binding effect was to be determined by the outcome of civil proceedings to be instituted against the General Motors Group. The restrictive effect of Paragraph 12 was to be lifted unless the Government obtained a final decree not subject to further review permanently divorcing General Motors Acceptance Corporation from General Motors Corporation by January 1, 1941. The Government filed such a suit against General Motors Corporation on October 4, 1940.<sup>28</sup> The suit is still pending. Five annual extensions of the time clause provided by Paragraph 12 were secured by consent (R. 42-65), extending the bar against affiliation to January 1, 1946 (R. 64-66). Ford refused the Government's request for a further extension to January 1, 1947.

A. IN THE ABSENCE OF AFFIRMATIVE PROOF OF COMPETITIVE DISADVANTAGE TO FORD, IT WAS WITHIN THE PROVINCE OF THE DISTRICT COURT TO EXTEND THE BAR AGAINST AFFILIATION

The precise question to be considered in this portion of the brief was before this Court in

<sup>28</sup> *United States v. General Motors Corporation, et al.*, Civil Action No. 2177, N. D. Ill., E. D.

*Chrysler Corporation v. United States*, 316 U. S. 556. In that case Chrysler, which was subject to a decree identical to the Ford decree, resisted extension of the bar against affiliation to January 1, 1943.<sup>26</sup> Both the majority and the dissenting opinions agreed that the district court had power to modify the decree in the manner requested in order to effectuate the purposes of the decree, not only because of the powers inherent in a court of equity (see *Swift & Co. v. United States*, 276 U. S. 311; *United States v. Swift & Co.*, 286 U. S. 106, 114; *United States v. International Harvester Co.*, 274 U. S. 693), but because of the express reservation of the power to modify contained in paragraph 14 of the decree. The sole issue upon which this Court divided was whether the district court had abused its discretion in granting the Government's motion for modification.

The court held that the primary purpose of the decree was to have the ultimate rights of the parties thereunder determined by the civil anti-trust proceedings against General Motors and that the time limitation was inserted to protect Chrysler from competitive disadvantage in the event that the Government should be dilatory in

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<sup>26</sup> Chrysler unsuccessfully resisted the Government's first application for an extension of the bar from January 1, 1941, to January 1, 1942. Its appeal to this Court was dismissed for want of a quorum of Justices qualified to sit. *Chrysler Corporation v. United States*, 314 U. S. 583, rehearing denied, 314 U. S. 716.



prosecuting the injunctive proceedings against General Motors (316 U. S. at 563).<sup>27</sup> It agreed with the district court that the Government had not lost the right to seek modification through lack of diligence in proceeding against General Motors and held that the crux of the question was "whether the extension of the ban on affiliation contained in paragraph 12 places Chrysler at a competitive disadvantage" (*id.*). The Court said, "if Chrysler desires to affiliate with a finance company and feels that its inability to do so places it at a disadvantage with its competitors, it should make such a showing to the District Court" (*id.*, p. 564). Since Chrysler had adduced no evidence in support of its claim of competitive disadvantage, the Court ruled that the district court had not abused its discretion in granting the Government's application for extension of the bar against affiliation.<sup>28</sup>

In this case, paragraph 12 of the Ford decree, entered under the same circumstances, containing the same language, and construed by the district

<sup>27</sup> The ruling affirmed verbatim the finding of the district court. Precisely the same finding was made in the case at bar (R. 160).

<sup>28</sup> The minority took the view that the burden was on the Government to establish by affirmative proof the necessity for modification of the decree. Since they were of the opinion that the Government had not proceeded against General Motors with the required degree of diligence, they concluded that the order of the district court was not within the proper limits of its discretion (316 U. S. at 571).

court in the same manner as the *Chrysler* decree, is before this Court. We submit that the *Chrysler* decision disposes of all questions here raised except whether the court below erred in holding that Ford had not shown that it was under a competitive disadvantage by reason of being barred from affiliation with a finance company while the civil proceeding against General Motors is pending. Since the purpose of the time limitation was to protect Chrysler and Ford from competitive disadvantage in the event that the Government was dilatory, it is clear that "competitive disadvantage" is "the controlling factor", as this Court stated in the *Chrysler* case (316 U. S. at 563). Appellant's insistence that, contrary to the finding of the court below (R. 158), the Government has not proceeded diligently against General Motors raises only a subsidiary question, but one which we shall show is without substance.

B. FORD PRESENTED NO PLAN TO THE DISTRICT COURT FOR AFFILIATION WITH A FINANCE COMPANY AND OFFERED NO PROOF THAT SUCH AFFILIATION WAS NECESSARY TO AVOID UNFAIRNESS

The record is barren of any intimation that Ford had any present or future intention of acquiring an interest in a finance company. In fact, appellant concedes (Br. 65-66) that it had formulated no such plans and urges that it was improper for the court below to expect it to submit a plan. As a consequence, appellant's argument that it is suffering a competitive disadvantage through its

inability to do that which it shows no intention of doing is surrounded by a certain aura of unreality.

The only effort which appellant makes to bolster up its *a priori* argument on competitive disadvantage is by reference to the chart attached to an affidavit filed in support of its motion (Br. 64-65). All that that chart shows is that since 1936 Ford's percentage of participation in the total car market has decreased from 30 percent to 19 percent. By *post hoc, ergo propter hoc* reasoning appellant insists that it has demonstrated that inability to affiliate with a finance company has placed it at a competitive disadvantage. What has been said at pages 39-43, *supra*, in regard to the same argument applies with equal force to repetition of the argument at this point. No other facts are urged as demonstrating competitive disadvantage.

Under these circumstances we submit that the District Court was correct in finding that Ford offered no evidence that further extension of the bar against affiliation would place it at a competitive disadvantage with General Motors, and in finding further that an extension of the bar for one year would not place Ford at a competitive disadvantage (R. 160).

The court below concluded as a matter of law "that the purpose and intent of the decree will be carried out if Ford Motor Company is given

the opportunity at any future time to propose a plan for the acquisition of a finance company, and to make a showing that such a plan is necessary to prevent Ford Motor Company from being placed at a competitive disadvantage during the pendency of complainant's civil litigation against General Motors Corporation" (R. 161). This conclusion offers appellant the exact opportunity to protect its rights which this Court approved in the *Chrysler* case (316 U. S. at 563). Since appellant chose to ignore the explicit directions of this Court as to the appropriate basis upon which to formulate a claim for relief, it should not be heard to complain that the district court denied a claim based on nothing more than a construction of the decree at odds with the principles announced in the *Chrysler* decision.

**C. THE GOVERNMENT HAS PROSECUTED THE DIVESTITURE SUIT AGAINST THE GENERAL MOTORS GROUP WITH REASONABLE DILIGENCE**

Appellant Ford insists (Br. 61-64) that the Government has not been diligent in requiring General Motors to part with General Motors Acceptance Corporation and made no showing of such diligence; that in the *Chrysler* case (316 U. S. 556) the Government offered in evidence a transcript of the proceedings in the civil suit against General Motors but no such transcript was offered here; and that the Government made no adequate showing of diligence in the prosecu-



tion of General Motors between January 15, 1942 (the date of the last step shown by the record in the *Chrysler* case) and December 31, 1945.

The various procedural steps taken in the divorce suit against the General Motors Group during the period from the entry of the decree herein on November 15, 1938, to January 15, 1942, are a part of the record in *Chrysler Corporation v. United States*, No. 1036, October Term, 1941, and hence are a matter of record in this Court.<sup>30</sup> That record was discussed in this Court's opinion in the *Chrysler* case (316 U. S. 556, 559-562), and was held sufficient to justify the District Court's finding of due diligence by the Government as of the date when such finding was made.

In the affidavit supporting our motion in the court below (R. 69-70) we detailed the steps taken subsequently. The affidavit recites that the Government has been engaged continuously in the taking of depositions *at the demand of General Motors Corporation* throughout all sections of the United States; that approximately 220 depositions had been taken in the case by July 9, 1945; and that General Motors had indicated an intention to take depositions of approximately 200

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<sup>30</sup> The same information was a matter of record in the court below because the *Chrysler* case originated in that court.

more witnesses.<sup>31</sup> The motion and affidavit recited further that on July 9, 1945, in an effort to limit the taking of further depositions and bring the case to trial, the Government filed a motion in the District Court to vacate or limit notices to take any further depositions; that such motion was argued; and that no ruling was made thereon.<sup>32</sup>

Participation in the taking of more than 400 depositions in all parts of the country, together with the Government's effort to end this phase of the case so that the trial might commence, should suffice to show that the Government has been reasonably diligent in attempting to dispose of the case during the period under discussion. The court below realized that, as a practical matter, the Government's hands were tied. In view of this fact, it found (R. 158) that the Government had proceeded diligently and expeditiously in prosecuting the divestiture suit against the General Motors group. A contrary finding would have resulted in forfeiture of the Government's right and duty to protect the public interest in this suit by reason of its inability to persuade a district court that limitations should be imposed on the use by other litigants of the discovery procedure afforded by the Federal Rules of Civil

<sup>31</sup> From July 9, 1945, to date approximately 200 additional depositions have been taken, making a total of more than 400 depositions taken. (*United States v. General Motors Corporation et al.*, Civil No. 2177, N. D. Ill., E. D.)

<sup>32</sup> Subsequently, in August 1946, the Government renewed its motion, which was denied by the District Court. *Ibid.*

Procedure. We submit that nothing short of a clear demonstration of great hardship—which appellant certainly has not made—should persuade this Court to repudiate the finding of the court below.

#### CONCLUSION

It is respectfully submitted that the decree of the District Court should be affirmed.

GEORGE T. WASHINGTON,  
*Acting Solicitor General.*

WENDELL BERGE,  
*Assistant Attorney General.*

HOLMES BALDRIDGE,

JAMES C. WILSON,

VICTOR O. WATERS,

*Special Assistants to the Attorney General.*

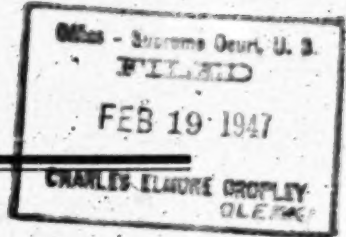
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IN THE  
**Supreme Court of the United States**

OCTOBER TERM 1946. 7.

~~No. 643~~ 11

FORD MOTOR COMPANY, *Appellant*,

v.

THE UNITED STATES OF AMERICA.

~~No. 644~~

COMMERCIAL INVESTMENT TRUST CORPORATION ET AL.,  
*Appellants*,

v.

THE UNITED STATES OF AMERICA.

Appeals from the District Court of the United States for the  
Northern District of Indiana.

**MOTION FOR LEAVE TO FILE A BRIEF  
AMICUS CURIAE.**

RUSSELL HARDY,  
*Attorney for*  
Associates Investment Company et al.

IN THE  
**Supreme Court of the United States**

OCTOBER TERM 1946.

---

No. 643

FORD MOTOR COMPANY, *Appellant*,

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No. 644

COMMERCIAL INVESTMENT TRUST CORPORATION ET AL.,  
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THE UNITED STATES OF AMERICA.

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Northern District of Indiana.

---

**MOTION FOR LEAVE TO FILE A BRIEF  
AMICUS CURIAE.**

---

Associates Investment Company, American Security  
Division of A. S. C. Corporation, and A. & A. Credit  
System, Inc., move the Court for leave to file a brief  
amicus curiae; and for cause show:

They and approximately 372 so-called independent automobile finance companies, are engaged in the business of financing the purchase and sale of Ford automobiles, wholesale and retail, throughout the United States. They and approximately 330 automobile finance companies are members of a trade association called American Finance Conference. They have permission from that association to make this motion in its behalf.

The appellants (who will be referred to as Ford and CIT), have refused to consent to the filing of a brief *amicus curiae*. The Solicitor General has consented for the appellee.

The proponents of this motion are the "independent finance companies" referred to in the complaint, and they are one of the important groups who are the directly injured victims of the refusals, preferences, discriminations and restraints practiced by the appellants. (R. 1, 6, 8-11) The other group is composed of the approximately 11,000 Ford dealers referred to in the complaint. (R. 4)

The independent finance companies are given a formal status in the decree by a provision permitting "any aggrieved finance company" to object to a plan by the appellants for financing the purchase of automobiles, which may constitute an unreasonable restraint of trade. (R. 30)

On November 15, 1938, a consent decree was entered against appellants, which, amongst other things, prohibited an affiliation between them by an acquisition of control over or interest in CIT, prohibited Ford from recommending, endorsing or advertising to dealers that they patronize CIT, and prohibited joint solicitation of dealers by Ford and CIT. (R. 23, 30)

In this appeal, the appellants seek to end these restrictions; obviously for the purpose of making the affiliation and engaging in the practices prohibited. That purpose, if effected, will constitute an unlawful restraint of trade which will be greatly injurious to the independent finance companies.

The decree provides that if the Government shall not in another suit procure a separation of General Motors Corporation and General Motors Acceptance Corporation, as well as a prohibition of similar practices, the prohibitions against the appellants shall be ended.

The position of the Government and the appellants, in the District Court, was that the decree was an agreement between them that an affiliation between Ford and CIT should be permitted, and that the appellants should be permitted to recommend, endorse and advertise the use by Ford dealers of CIT, and to jointly solicit the dealers for that purpose; even though the affiliation and practices should be productive of restraint of trade; UNLESS in a criminal case then pending against General Motors similar practices should be condemned by the verdict of the jury, and UNLESS in another suit to be brought against General Motors a similar affiliation and similar practices should be enjoined. As to the practices, the contention of the Attorney General was that the agreement had been performed, because the verdict had condemned the practices. As to the affiliation, the contention was that for certain reasons he had been unable to procure the de-affiliation of General Motors and should be given more time to do so.

Accordingly, we believe that the questions which will be presented to this Court by the principal parties will be (1) whether the verdict of a jury condemned the practices as illegal, and (2) whether the Attorney General has a good excuse for delay in procuring a divorcement of General Motors. We believe these questions are superficial, and ignore more important fundamental questions.

The proper and fundamental questions are (1) whether the agreement to tie this case and the General Motors case together, was an agreement not to molest one offender if another should not be promptly and successfully prosecuted; (2) whether that agreement is contrary to public policy; and (3) whether the creation of a community of interest between Ford and CIT in the automobile finance



business, plus the recommending, endorsing and advertising by appellants that Ford dealers should patronize CIT, and the Ford-CIT joint solicitation of the dealers for that purpose, may or will constitute a restraint of trade.

In the Distriet Court we asked and were refused the right to formally intervene, but were given the right to file a brief amicus and to make an argument. We believe that the brief and argument were helpful to the Court, and presented a pertinent and important view not stated by the principal parties.

The proponents of this motion, therefore pray for leave to file a brief to argue (1) that the agreement to relieve the appellants of the restrictions of the decree until action shall be taken against General Motors, is contrary to public policy and should not be enforced by the courts, and (2) that even if there were only a probability that the proposed affiliation and practices would constitute a restraint of trade, the restrictions should not be ended.

Respectfully submitted,

.....  
RUSSELL HARDY,  
*Attorney for*  
Associates Investment Company et al.

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1946 **8**

~~NO. 041.~~ **#** /  
FORD MOTOR COMPANY, *Appellant,*

v.

THE UNITED STATES OF AMERICA.

~~NO. 041.~~

COMMERCIAL INVESTMENT TRUST CORPORATION, et al.,  
*Appellants,*

v.

THE UNITED STATES OF AMERICA.

Appeals from the District Court of the United States for the  
Northern District of Indiana

**BRIEF AMICUS CURIAE.**

RUSSELL HARDY,  
*Attorney for amicus curiae.*

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1946.

\_\_\_\_\_  
No. 643.

FORD MOTOR COMPANY, *Appellant*,

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COMMERCIAL INVESTMENT TRUST CORPORATION, et al.,  
*Appellants*,

v.

< THE UNITED STATES OF AMERICA.

\_\_\_\_\_  
Appeals from the District Court of the United States for the  
Northern District of Indiana

\_\_\_\_\_  
**BRIEF AMICUS CURIAE.**

\_\_\_\_\_  
Permission to file this brief was granted by an order entered March 3, 1947. The brief is filed by Associates Investment Company, American Security Division of A. S. C. Corporation, and A. & A. Credit System, Inc., and on behalf of approximately 372 so-called independent automobile finance companies. They are members of a trade asso-



ciation called American Finance Conference. They are engaged in the business of financing wholesale and retail transactions in automobiles manufactured by Ford and others. They are the "independent finance companies" referred to in the complaint, and are one of the two groups who are the directly injured victims of the refusals, preferences, discriminations and restraints practiced by the appellants. (R. 1, 6, 8-11) The other group is composed of the approximately 11,000 Ford dealers referred to in the complaint. (R. 4)

Six of the appellants are also engaged in the automobile finance business. They are a group of affiliated corporations controlled by the appellant Commercial Investment Trust Corporation. In this brief it is not necessary to distinguish among them, and for brevity they will be referred to as CIT.

General Motors Acceptance Corporation, a wholly owned subsidiary of General Motors, will be referred to as GMAC.

### **STATEMENT OF THE CASE.**

About ninety-four per cent of the automobiles are made by Ford, Chrysler and General Motors. About forty-four per cent are made by General Motors; twenty-five per cent by Chrysler; and twenty-five per cent by Ford. (R. 3, 136.) The other six per cent are made by twelve to fifteen other companies. (R. 5, 124A, 124B, 136/150)

The distribution of automobiles is divided into two major parts, both of which utilize financing facilities: (a) sales of units by the manufacturer to dealers, involving use of wholesale credit; and (b) sales by the dealers of units previously purchased from manufacturers to retail purchasers, utilizing retail credit.

More than four billion dollars per year is paid to automobile manufacturers for automobiles at wholesale. About two billions of this sum is advanced to dealers by automobile finance companies. (R. 6, 138, 141) More than eighty per cent of this two billions is furnished by three companies:

Commercial Investment Trust, Commercial Credit Company and General Motors Acceptance Corporation. (R. 139) The remaining twenty per cent is furnished by about 375 other finance companies. (R. 5-6, 139, 141) These percentages and other facts, although stated in the present tense, necessarily apply as of the time when the litigation began—November 1938.

CIT furnishes about 82 per cent of the wholesale money advanced for Ford cars. Commercial Credit and GMAC furnish about the same percentage for Chrysler and General Motors cars, respectively. (R. 6)

In the retail field, about sixty per cent of the new cars are sold by the dealers on credit. About six billion dollars is furnished by the finance companies for this purpose, five billions being advanced by the three companies named and the remaining one billion by the 375 other companies. (R. 6.) CIT furnishes about 70 per cent of the retail money for Ford cars. (R. 6-7) Commercial Credit and GMAC furnish about the same percentage for Chrysler and General Motors cars.

GMAC is controlled by General Motors, by 100 per cent stock ownership. (R. 5) No automobile transactions except those of General Motors dealers are financed by GMAC. GMAC confines car financing to wholesale transactions between the dealers and General Motors, and to retail transactions for new and used cars between the GM dealers and their customers. It does not compete with Commercial Credit, CIT or the other finance companies, for Chrysler or Ford business.

Chrysler and Commercial Credit are affiliated. Chrysler acquired a substantial part of the stock of Commercial Credit. Chrysler and Commercial Credit also entered into a contract, pursuant to which Chrysler caused its dealers to patronize Commercial Credit, for which Commercial Credit paid to Chrysler a substantial part of its consolidated net profits for each year, amounting to about one million dollars a year. (R. 5; Record in *Chrysler Corporation v. United States*, 316 U.S. 556; October Term, 1941, No. 1036)

Universal Credit Corporation (which is the Ford automobile financing department of CIT), was originally organized by Ford. Ford held all of the Universal Credit stock until 1933, at which time Ford sold all of the stock to CIT. (R. 2) Since that time CIT, Universal Credit and Ford have been affiliated in the automobile financing field by working agreement. (R. 5) Ford now seeks to reestablish the stock affiliation.

In three indictments returned at South Bend on May 27, 1938, the Government attacked as monopolistic and in restraint of trade the methods practiced by CIT, Commercial Credit, GMAC, Ford, Chrysler and General Motors, for the acquisition of the automobile financing business. One indictment charged a conspiracy between Ford and CIT and certain individuals; another charged a conspiracy between Chrysler and Commercial Credit; and the third, a conspiracy between General Motors and GMAC and individuals.

The acquisition methods charged in the three indictments are practically identical. The great economic weakness and dependence of the dealers, has made those methods effective to produce monopoly. (R. 150) The dealer may not and does not handle the cars of more than one manufacturer. His contract with the factory is for one year only, and provides that within that year, the factory may cancel and terminate it on short notice and without any specified cause. (R. 144-145)

In each of the indictments it was charged that for the purpose of coercing the dealers to patronize the affiliated finance company, the manufacturer refused to give any dealer a contract unless he promised to patronize that finance company exclusively (R. 144); threatened to cancel dealers' contracts because they had patronized other finance companies; actually cancelled dealers' contracts and refused to furnish them cars. (R. 145)

It was also charged that the manufacturer practiced many discriminations in favor of the affiliated finance company and against the unaffiliated companies. These in-

cluded furnishing to the affiliated company and withholding from the unaffiliated companies, the use of offices and quarters in the factories, giving to the affiliated company and refusing to all others information relative to sales and deliveries of cars to dealers, furnishing to the affiliated companies documents for security of loans made to dealers, and refusing the same assistance to the other companies, and imposing upon dealers patronizing unaffiliated finance companies onerous requirements relative to payment for automobiles, not imposed upon dealers patronizing the affiliated company. (R. 146-148)

The indictments charged that it was the practice of the manufacturer to advertise, endorse and recommend the use by dealers of the financing services of the affiliated company to the exclusion of other companies. (R. 148)

It was charged that the dealers were compelled to permit examination and inspection of their books and records, to enable the defendants to discover and prevent transactions with unaffiliated finance companies, that the manufacturer procured such information from employees of dealers without the knowledge of the dealers, and sometimes by bribery; and that where such patronage was discovered, dealers were required to explain and justify the relations. (R. 145-146)

The defendants in the General Motors-GMAC indictment were tried and convicted at South Bend on November 17, 1939. The conviction was affirmed by the Circuit Court of Appeals at Chicago on May 7, 1941. (121 F. 2d 377.) Certiorari was denied by this Court. (R. 159)

On November 15, 1938, one year prior to the trial and conviction in the General Motors case, however, consent decrees were entered in the Ford and Chrysler cases, and the indictments against the Ford and Chrysler groups were dismissed. (R. 18)

The complaints on which the decrees were based were filed at South Bend on November 7, 1938, a week prior to the entry of the decrees. The use of the same methods of



business acquisition stated in the indictments was alleged in the complaints. (R. 7-11.) In the Ford-CIT case it was added that agents of CIT were permitted by Ford to attend its sales meetings with dealers for the purpose of procuring the financing business; that that privilege was denied to other finance companies; that for the same purpose agents of Ford and CIT jointly visited and solicited dealers; and that that assistance was denied by Ford to competitors of CIT. (R. 9, 11)

The complaint in the Ford-CIT case also alleged that, unless enjoined, Ford would discriminate in favor of CIT by the acquisition of stock or other interest in that company. (R. 11)

The decrees are probably the most complicated ever entered in an antitrust case. The prohibitions are loaded with qualifications, conditions, sub-qualifications, sub-conditions and exceptions under which Ford and CIT may in large measure practice the coercive and discriminatory methods.

The decree also contains two major defeasance conditions.

The first condition provided for a total suspension of the decree. The condition was that if the criminal case then pending against General Motors should not result in a conviction, every prohibition of the decree should become inoperative and suspended, until like prohibitions should be imposed upon General Motors. It was provided that any agreement, act or practice held to be the proper basis for a verdict of guilty by the trial court in its instructions to the jury, should be considered the equivalent of a decree prohibiting such agreement, act or practice. (R. 35-36)

It was provided, further, that upon application of the defendants, the court "will enter orders" suspending restraints upon Ford and CIT not imposed upon General Motors. (R. 36)

The second condition provided for a partial suspension; that is, that if prior to January 1, 1941, General Motors had

not been required to divest itself of all ownership and control of GMAC, then Ford should not be prevented from acquiring ownership and control of a finance company. (R. 34-35)

The first condition was met by the verdict of guilty returned November 17, 1939. On this appeal, however, the appellants contend that as to certain provisions of the decree the condition has not been met by that conviction.

Full compliance with the second condition (separation of General Motors and GMAC), has not been had. Proceedings for that purpose were initiated on October 4, 1940, when an action was brought against General Motors in the District Court at Chicago, for the purpose of procuring the divestiture and a prohibition of the practices. Thereafter up to July 9, 1945, the depositions of 220 witnesses were taken by General Motors; and General Motors had at that time indicated an intention to examine approximately 200 more. At that time, therefore, the Government in an effort to expedite the case, filed a motion to limit additional depositions; but as of December 31, 1945, no ruling had been made on that motion. (R. 69-70) Since December 21, 1940, the requirement for full compliance with this condition has been postponed from year to year with the consent and agreement of the appellants, until January 1, 1946. (R. 42, 43, 66-68.)

On December 31, 1945, the Government filed a motion for the extension of the bar against affiliation for an additional year, until January 1, 1947. On May 4, 1946, Ford filed an opposition to this motion, and at the same time filed its own motion for modification of the decree to permit affiliation and for suspension and modification of provisions of the decree relating to practices. CIT also filed a motion seeking the same suspensions and modifications as to practices (R. 66, 70, 74, 76, 187), but sought no change in the anti-affiliation provisions.

By the motions the appellants sought permission to Ford (1) to acquire control over or an interest in any finance

company, and (2) to recommend, endorse or advertise any plan or finance company to any dealer or the public either in conjunction with or independently of any finance company; and permission to Ford and CIT (3) to have their agents "together be present with any dealer or prospective dealer for the purpose of influencing the dealer or prospective dealer to patronize" CIT. (R. 23, 30, 32, 76)

The District Court found that the Trial Court<sup>1</sup> in its instructions held the agreements, acts and practices enjoined in the decree, constituted a proper basis for a general verdict of guilty, and that Ford and CIT were not laboring under any competitive disadvantage in favor of General Motors and GMAC because of that injunction. (R. 159) Hence, that the first condition as to the continuation of the injunction against the practices, had been met.

The District Court also found that time was not of the essence with respect to the bar against affiliation, that Ford had offered no proof that further extension of the bar would place it at a competitive disadvantage, that further extension would not in fact place it at such a disadvantage, and that the government had proceeded diligently and expeditiously in the General Motors suit. (R. 158, 160)

**The Plan Which Ford and CIT Propose to Put Into Effect, Constitutes a Combination and Conspiracy to Restrain and Monopolize Trade and is in Violation of the Anti-trust Laws.**

The legal issues involved in this litigation, and the application of the law thereto, are best understood in relation to the fundamental steps heretofore mentioned involved in the distribution of Ford automobiles. In this distribution two steps are involved, each separate and distinct: Step 1, sales of motor vehicles by Ford to its dealers; Step 2, sales by dealers to retail buyers.

<sup>1</sup> The District Court and the Trial Court were the same Court. District Judge Walter C. Lindley presided at the trial and charged the jury. (R. 108.) District Judge Patrick T. Stone, heard and decided the motions for suspension and modification. (R. 162)

In step 1 Ford Motor Company sells its cars to all Ford dealers for cash, at the factory and before delivery. At or before the time the cars are moved from the factory for delivery to the purchasing dealer, every car has been paid for in full. Credit by Ford is absolutely excluded. Ford sells on the same cash basis on which a vending machine operates: full cash payment in the slot before delivery. This is a basic, invariable and controlling fact in this case. It means that Ford has transferred title, ownership and possession to new owners, namely, the retail dealers, before any subsequent trade in Ford cars has begun.

Ford has its own reasons for this "cash—no credit" policy. The benefits and wisdom of the policy are obvious. The reasons are immaterial. The important fact is that Ford chooses not to assume the responsibility and risks and the trouble and cost of administering a credit system. While Ford so demands and receives cash on delivery for its merchandise, it is necessary usually for the dealers to borrow in order to make this cash purchase.

Loans to dealers for the wholesale purchase of cars, are transactions in which the dealer's promissory note for the amount of the loan is secured by some form of lien on the cars which are purchased with the money, with an arrangement for releasing the lien in whole or in part, as the cars are later sold by the dealer. These loan transactions are wholly between the dealers and the lenders. No endorsement or other assurance of payment to the lender is given by Ford. The antitrust action here involved was brought because Ford coerced the dealers to borrow such money exclusively from CIT.

In step 2, the retail dealer sells the new car, in which Ford no longer has any ownership, to a retail buyer, either for (a) cash, or (b) upon an installment payment plan. In these transactions, the dealer usually receives a negotiable promissory note signed by the purchaser and payable to the dealer, in monthly or other periodical installments. Payment is assured by some form of lien or conditional



sales provision. The promissory note and the contract are, of course, the sole property of the dealer. He may (if not subjected to unlawful interference) hold and collect it or sell it to whom he pleases.

Banks, automobile financing companies and other credit agencies, desire and offer to buy these notes from the dealers. Purchases of the notes from the dealers are made on a discount basis. This antitrust action was brought because Ford also coerced the dealers to sell the notes and contracts exclusively to CIT.

The Ford and CIT motions disclose a plan for financing the purchase and sale of Ford cars, to be jointly devised, owned, operated and controlled by Ford and a finance company (probably CIT).

If the District Court shall be reversed, a combination between Ford and a finance company will be established for the purpose and with the effect of together acquiring all of the financing of wholesale and retail transactions in Ford cars. To that end they will recommend, endorse and advertise the affiliated company as the one to be patronized by the dealers. The agents of Ford and the affiliated finance company will together call upon and jointly solicit the dealer to induce him to patronize the affiliated finance company.

The susceptibility of the dealers to these methods is greatly increased by their notoriously weak economic condition, and especially by their precarious contractual position with Ford. Referring to the economic condition of the dealers, the indictment in the General Motors case stated:

the automobile dealers . . . have had substantial investments of money, credit, and property in their businesses of purchasing and selling automobiles, as aforesaid; said investments and businesses would have been greatly reduced in value and destroyed by the defendants carrying out the aforesaid intimations, suggestions, threats, cancellations, and statements; and to prevent such destruction, loss and damage of and to their investments and businesses, all or almost all of

the dealers, have complied with said intimations, suggestions, threats, and statements. (R. 150)

Prior to the indictment and decree, the same business acquisition methods enabled CIT to acquire 82 per cent of the Ford wholesale financing and 70 per cent of the retail financing—which included all the cream of the business and as much of the remainder as they cared to take. (R. 6-7)

Will dealers, whose business existence is based upon a one-year contract with Ford, which places no real contractual obligation upon Ford, and who are out of business if they receive no Ford cars, challenge and displease Ford and commit commercial suicide by exercising a real freedom of choice among finance companies by not dealing exclusively with the company with which Ford is affiliated by proprietary interest, which Ford has recommended, advertised and endorsed, and with whom Ford has jointly solicited them? Will the dealers give their business to companies which they know Ford does not want them to patronize?

*The continuation of the prohibition of acquisition by Ford of ownership and control of a finance company, is necessary to prevent and restrain a violation of the anti-trust laws.*

The Ford proposal is not merely to acquire an investment interest in a finance company, but to acquire ownership and control as an important and essential part of a comprehensive plan, the purpose and effect of which will be to restrain and monopolize the business of financing the purchase and sale of Ford automobiles.

The acquisition would be violative of the Sherman Act and of Section 7 of the Clayton Act, the latter of which expressly prohibits such a transaction.

The Clayton Act states:

That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of

the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be . . . to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce. (U. S. C. A., Tit. 15, Sec. 18)

It is only necessary that the proposed acquisition "may" restrain trade. As stated by this Court in *Standard Fashion Co. v. Magrane-Houston Co.*, 258 U. S. 346, 357:

It was intended to prevent such agreements as would under the circumstances disclosed probably lessen competition, or create an actual tendency to monopoly.

There can be no doubt that in the circumstances disclosed in this case, and in the light of the decision of the Circuit Court of Appeals in *United States v. General Motors Corporation*, 121 F. (2d) 376, the effect of the acquisition to restrain and monopolize is not merely a probability but a certainty.

The acquisition is part of a plan to procure and exercise control. The mere acquisition and possession of the power makes the transaction illegal.

. . . to vitiate a combination . . . it need not be shown that the combination, in fact, results or will result in a total suppression of trade or in a complete monopoly, but it is only essential to show that by its necessary operation it tends to restrain interstate or international trade or commerce and to deprive the public of the advantages that flow from free competition . . . *Northern Securities Co. v. United States*, 193 U. S. 197, 332.

When men deliberately and intelligently go to work and acquire power that will enable them to control the market if they choose to exercise it, there is no use for them to say that they did not intend to control the trade or limit competition. Nor, when the legality of their act of acquisition is in question, is it any use for them to say that they have not used the power to oppress anyone . . . The law regards such a power ac-

quired by such a combination as dangerous to the rights of the people and forbids its acquisition. *State v. Harvester Co.*, 237 Mo. 369, 394.

In the *Northern Securities* case, 193 U. S. 197, 337, this court said:

In all the prior cases in this court the antitrust act has been construed as forbidding any combination which by its necessary operation destroys or restricts free competition among those engaged in interstate commerce; in other words, that to destroy or restrict free competition in interstate commerce was to restrain such commerce.

In *United States v. Crescent Amusement Co.*, 323 U. S. 173, 189; the court said:

The Court has quite consistently recognized in this type of Sherman Act case that the government should not be confined to an injunction against further violations. Dissolution of the combination will be ordered where the creation of the combination is itself the violation. (citing cases) Those who violate the Act may not reap the benefits of their violations and avoid an undoing of their unlawful project on the plea of hardship or inconvenience. That principle is adequate here to justify divestiture of all interest in some of the affiliates since their acquisition was part of the fruits of the conspiracy.

But the relief need not, and under these facts, should not be so restricted. The fact that the companies were affiliated induced joint action and agreement. Common control was one of the instruments in bringing about unity of purpose and unity of action and in making the conspiracy effective. If that affiliation continues, there will be tempting opportunity for these exhibitors to continue to act in combination, against the independents. The proclivity in the past to use that affiliation for an unlawful end warrants effective assurance that no such opportunity will be available in the future. Hence we do not think the District Court abused its discretion in failing to limit the relief to an injunction against future violations. There is no



reason why the protection of the public interest should depend solely on that somewhat cumbersome procedure when another effective one is available.

The fact that the charges of the indictment and complaint were not put to the test of proof, does not change the rule or power of the court. In answer to the contention that restrictions of a consent decree should be lifted because there had been no proof and no adjudication of guilt, this Court said in *Swift & Co. v. United States*, 276 U. S. 311:

The argument is that as the Government made no proof of facts to overcome the denials of the answers, and stipulated both that there need be no findings of fact and that the decree should not constitute or be considered an adjudication of guilt, it thereby abandoned all charges that the defendants have violated the law; and hence the decree was a nullity. The argument ignores the fact that a suit for an injunction deals primarily, not with past violations, but with threatened future ones; and that an injunction may issue to prevent future wrong although no right has yet been violated. (p. 326)

*The proposed practice by Ford of recommending, endorsing and advertising an affiliated finance company, and the joint solicitation of the dealers by the Ford and finance company agents, are inherently discriminatory and alone and as parts of a plan are monopolistic.*

Ford does not intend to treat all finance companies equally. It needs no suspension of the decree to accord such equal treatment. It needs a suspension only because it proposes to discriminate against all but one of the companies.

The theory of the appellants is that the legality of these practices is to be determined as if they were unrelated to, and separate and apart from the other parts of the plan. Nothing could be more erroneous. The plan must be considered as a whole, and in the light of its purpose and effect. The certain monopolistic effect of the parts of the plan, separately and as a whole, is made more inevitable by the

relatively small size and resources of the dealers; the lack of any real contractual obligation on the part of Ford to furnish them with cars; the large size and resources of Ford; the fact that the dealer's business existence is absolutely dependent upon the pleasure of Ford. The following statement on this subject by the Circuit Court of Appeals, with regard to General Motors is equally true as to Ford.

The record shows that the appellants hold a dominant position in the automotive industry, GMC being the largest manufacturer in the United States and GMAC being the largest sales finance company in the world. On the other hand, every dealer owns one of the 15,000 dealerships located throughout the country, and his status is determined by the franchise agreement which is subject to annual renewal and to cancellation on very short notice without cause. Although every dealer is an independent business man, the supervision and control exercised by GMAC and GMSC over his business operations is almost as complete as if the dealer were an agent in all respects. Every dealer also acquires a substantial investment in buildings, cars, parts and accessories, and builds up good will in his community. Consequently a cancelled dealership leaves the appellants with one less retail outlet which can be replaced readily, but leaves the disfranchised dealer without a business and burdened with his substantial investment in the liquidation of which he is likely to sustain a heavy loss. (121 F. (2d) 397-398)

A conspiracy in restraint of trade is not to be judged by dismembering it and viewing its separate parts, but only by looking at it as a whole:

*Montague v. Lowry*, 193 U. S. 39, 45-46

*United States v. Patten*, 226 U. S. 525, 544.

As stated by this Court in *Swift v. United States*, 196 U. S. 375:

The scheme as a whole seems to us to be within reach of the law. . . . It is suggested that the several acts charged are lawful and that intent can make no difference. But they are bound together as parts of a single plan. The plan may make the parts unlawful.

*Aikens v. Wisconsin*, 195 U. S. 194.

Again, in *United States v. Crescent Amusement Co.*, 323 U. S. 173, this Court said:

We may assume that if a single exhibitor launched such a plan of economic warfare he would not run afoul of the Sherman Act. But the vice of this undertaking was the combination of several exhibitors in a plan of concerted action. They had unity of purpose and unity of action. (p. 259)

It is not for us, however, to pick and choose between competing business and economic theories in applying this law. Congress has made that choice. It has declared that the rule of trade and commerce should be competition not combination. (p. 261)

The plan which Ford and CIT propose to put into effect, is a plan which they have together and in combination formulated, and which they will jointly and in combination put into effect. It is a plan which they will jointly control, and in which they will have a community of proprietary and pecuniary interest. Moreover, Ford, although having parted with all property interest in the cars the purchases and sales of which are to be financed by the combination, will nevertheless intrude into the financing field and become a competitor of all other financing companies. This joint action meets every definition of combination and conspiracy, and as has been held by the Circuit Court of Appeals in *United States v. General Motors Corporation*, 121 F. (2d) 376, 399, "the necessary and inevitable effect" will be to produce two distinct restraints of trade.

**No Suspension or Modification of the Decree is Permissible on the Theory that the Attorney General Made a Contract With or Gave a Promise to Ford and CIT.**

In the District Court Ford contended that any opposition to the Ford and CIT motions—

is a breach of contract by the Department and a violation of the representations of the Department. (*Brief of Respondent Ford Motor Company in Support of motion to suspend and modify provisions of consent decree*, p. 5)

In the District Court CIT made the same contention, as follows:

We say that we are entitled to a suspension of these ... two paragraphs; that's all it is, because they didn't comply with certain conditions. We say it is mathematically demonstrable, just like two and two is four, that they haven't got a consent decree against General Motors and the instructions didn't cover the things we are asking relief from. And we say that *the Government like any other party who makes an agreement, should be bound by that agreement*. (*Transcript of Proceedings*, pp. 107, 108.)

In the Ford brief the subject is characterized in the nomenclature of contract and agreement. It is referred to as a "compromise of the conflicting interests of Ford and the Government", as a compromise agreed to by the parties and their "negotiators". (Ford Brief, pp. 50-53)

According to the Ford and CIT motions, the terms of the agreement are found in paragraphs 12 and 12a of the decree, wherein, they assert, they were given an absolute right to have the decree vacated. They contend that the parties to that agreement intended that the action of the court to make that agreement effective, should be "automatic"; in other words, ministerial, not judicial.

Paragraph 12 provides that if prior to January 1, 1946, no decree has been entered divesting GM and GMAC, noth-



ing in the Ford-CIT decree shall prevent Ford from acquiring ownership and control of a finance company.

Paragraph 12a provides (1) that if GM is not convicted, every provision of the Ford-CIT decree shall be suspended until similar restrictions are imposed on GM by a final decree; (2) that a general verdict of guilty against GM shall be the equivalent of a decree determining the illegality of and prohibiting "any agreement, act or practice" which the court shall have instructed the jury would constitute a proper basis for a verdict of guilty; and; (3) that after the entry of such a decree, Ford or CIT may apply for, and the court will suspend any restraints not contained in the GM decree.

The motions quote statements made by officials of the Department of Justice, made prior to and contemporaneously with the alleged contract, as authoritative and binding statements of the purpose and intention of the parties to the contract; all of the statements being to the effect that General Motors was not to have a competitive advantage over Ford and CIT. (R. 82-85)

The theory of the appellants is that the legality of their plans is immaterial. The theme is that the decree is an agreement between them and the Attorney General that they are not to be molested in making a corporate affiliation, in recommending, endorsing and advertising the use by Ford dealers of a preferred finance company, and in jointly soliciting the dealers to cause them to use that company, unless there shall be a separation of General Motors and GMAC, and unless the District Court shall condemn those practices in the General Motors case. They contend that, no such separation and no such condemnation having occurred, they are now entitled to the "automatic" action of the court in awarding specific performance of that contract.

If it was the intention on the part of the prosecuting officers that the appellants were to have this action for the purpose of meeting even an UNLAWFUL competitive advantage by General Motors, by being permitted to engage

in similar unlawful conduct, the appellants thus impute to the Attorney General, his assistants, and the District Attorney the making of an unlawful contract, not to discharge the duty imposed upon them by statute—

to prosecute . . . all delinquents for crimes and offenses cognizable under the authority of the United States, and all civil actions in which the United States are concerned . . . (USCA, Tit. 28, sec. 485),

and

to institute proceedings in equity to prevent and restrain violations

of the antitrust laws. (USCA, Tit. 15, sec. 4)

Such a contract is contrary to public policy, and will not be aided by the courts. While the courts may not regulate or control the prosecuting officials in the administration of the antitrust laws, they should not clear the way for the performance of improper arrangements.

The removal of a competitive advantage between Ford and General Motors, and between CIT and GMAC, by permitting an affiliation between Ford and a finance company, would not establish a situation in harmony with the law. It would merely aggravate the existing monopoly condition. The theory that the problem of restraint and monopoly would be solved by putting the three great motor car companies and the three great finance companies on that basis of equality, is based upon the erroneous assumption that they are the only companies in the business and are the only ones entitled to that competitive advantage. That remedy would merely increase restraint, monopoly and illegality. The twelve or more other motor car companies and the 375 other finance companies, who are equally entitled to be free from such competitive conditions, would continue to suffer in greater degree the competitive disadvantage of which Ford and CIT now complain. This remedy, which disregards and relegates them to a status of inequality, ought not to be sanctioned by this Court.

There was no consideration flowing to the Government in the alleged contract. The appellants merely consented not to violate the law. They assert that they agreed to "prohibitions and requirements that actually go beyond the requirements of the Sherman Anti-Trust Law," (R. 87) and to "provisions which otherwise could not be obtained under existing law". (R. 195) But, as shown, the prohibitions of the decree are well within the statute.

The decree was by no means a gratuity from Ford and CIT to the Government. It was small payment for what the appellants received, and incomplete compliance with the law. In exchange for the decree they escaped trial and the grave jeopardy of conviction for conduct like that for which General Motors was later convicted. In addition, they received generous and questionable concessions and privileges, enumerated in the decree. They prevented the procurement of a judgment which could be used as prima facie evidence in treble damage actions.

A consent decree is not a contract but a judicial act. Any theory that such a decree is a contract between defendants and the Attorney General, and, therefore, may contain provisions limited by their own wishes and private contractual capacity, is erroneous, as was indicated by this Court in *United States v. Swift & Co.*, 286 U. S. 106, as follows:

We reject the argument for the interveners that a decree entered upon consent, is to be treated as a contract and not as a judicial act. A different view would not help them, for they were not parties to the contract, if any there was. All the parties to the consent decree concede the jurisdiction of the court to change it. The interveners gain nothing from the fact that the decree was a contract as to others, if it was not one as to them. But in truth what was then adjudged was not a contract as to any one.

**The Court Has No Jurisdiction to Make the Suspensions and Changes Sought, Because that Action Would Not Prevent and Restrain But Would Permit Violations of the Antitrust Laws.**

The questions which arise on these motions must be decided according to the rules of law and the principles of equity. A decision is not permissible which is made to carry out a deal, contract or promise between the parties to the decree, if their transaction is in conflict with the law and equity. This is true even though that contract is embodied in the decree, in whole or in part, either as a condition or qualification to operate as a suspension or otherwise. Where such a contract or such provisions of the decree are in conflict with the law and equity, law and equity must prevail and must be applied by the Court.

The contention of the defendants is to the contrary. They contend that their contract with the Attorney General and the decree, state and establish their rights. Stated in another way, the contention is that the question of conflict between the general law, the law against restraint and monopoly, and the principles of equity, on the one hand, and the contract and the provisions of the decree on the other, is irrelevant and immaterial.

They contend that the function of the Court at this stage is ministerial and not judicial; that its jurisdiction is limited to answering two simple questions of fact: (1) whether a decree has been entered in the civil antitrust case pending against General Motors at Chicago; and (2) whether the District Court in the criminal case against General Motors, instructed the jury that any "agreement, act or practice" prohibited in the Ford and CIT decree was illegal.

They contend that, having made this ministerial decision, the action of the Court with regard to changing the decree is "automatic".

The argument was stated by counsel for CIT in the District Court as follows:



We say that we are entitled to a suspension of these . . . two paragraphs; that's all it is, because they didn't comply with certain conditions. We say it is mathematically demonstrable, just like two and two is four, that they haven't got a consent decree against General Motors and the instructions didn't cover the things we are asking relief from. And we say that the Government like any other party who makes an agreement, should be bound by that agreement. (*Transcript of Proceedings*, pp. 107-108)

The entry of the ~~decree~~ was a judicial act. The making or refusal of the suspensions and modifications is a judicial act. The question of the legal character of the present plan and purposes of the appellants, is therefore open and should control the action of the court.

The action of the Court upon the motions is limited by its jurisdiction. The Court has no jurisdiction to suspend provisions of this decree if the suspension will operate to permit the appellants to effectuate plans and purposes which are contrary to law.

The District Courts are given jurisdiction only to "PREVENT AND RESTRAIN" violations of the antitrust laws. This does not, of course, include jurisdiction to do precisely the opposite, to change, suspend or abrogate provisions of a decree where the effect will be to permit parties to violate the antitrust laws.

The Sherman Antitrust Act provides:

Sec. 4. The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this Act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. (U. S. C. A., Tit. 15, Sec. 4)

The rule as to the remedy within the jurisdiction of the courts was stated by this Court in *United States v. Standard Oil Co.*, 221 U. S. 1, as follows:

\*\*\* to meet the situation with which we are confronted the application of remedies two fold in character becomes essential: 1. To forbid the doing in the future of acts like those which we have found to have been done in the past which would be violative of the statute. 2. The exertion of such measure of relief as will effectually dissolve the combination found to exist in violation of the statute, and thus neutralize the extension and continually operating force which the possession of the power unlawfully obtained has brought and will continue to bring about. (pp. 77-78)

This Court has consistently followed the same rule to the present day. In *United States v. Bausch and Lomb*, 321 U. S. 706, 726, it said that the test of a proper decree under the antitrust laws "is whether or not the required action (of the decree) reasonably tends to dissipate the restraints and prevent evasions."

This decree is not one between private parties for the settlement of a private controversy, in which only the private affairs, property and interests of the immediate litigants is affected. The decree applies to a great trade and commerce, of the most important and widely ramified public interest. It deals with the business and property of upwards of 11,000 Ford automobile dealers, indirectly of about 40,000 dealers in other cars.

It affects the lawful rights and business and property of 375 or more automobile finance companies and lending agencies. In the same manner it affects millions of purchasers of automobiles. It deals with the great public policy of equality of opportunity in trade and commerce versus restraint and monopoly, and the enforcement of that policy.

### Conclusion.

It is respectfully submitted that the order of the District Court should be affirmed.

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